

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA

DONALD J. TRUMP FOR : CIVIL ACTION NUMBER
PRESIDENT, INC. :
:
:
VERSUS :
:
PHILADELPHIA COUNTY BOARD :
OF ELECTIONS : 20-5533

JAMES A. BYRNE U.S. COURTHOUSE
THURSDAY, NOVEMBER 5, 2020
COMMENCING AT 5:30 P.M.
PHILADELPHIA, PA 19106

BEFORE THE HONORABLE PAUL S. DIAMOND, J.

HEARING: MOTION FOR EMERGENCY INJUNCTION

APPEARANCES:

JEROME MARCUS, ESQUIRE
P.O.BOX 212
MERION STATION, PA 19066
JMARCUS@MARCUSLAW.US

COUNSEL FOR PLAINTIFF

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PROCEEDINGS RECORDED BY STENOGRAPHY-COMPUTER,
TRANSCRIPT PRODUCED BY COMPUTER-AIDED TRANSCRIPTION

1 CONTINUED APPEARANCES:

2 ROBERT A. WIYGUL, ESQUIRE
3 HANGLEY ARONCHICK SEGAL
4 PUDLIN AND SCHILLER ESQUIRE
ONE LOGAN SQUARE 27TH FLOOR
PHILADELPHIA, PA 19103

5 COUNSEL FOR DEFENDANT

6
7 MEGHAN CLAIBORNE, ESQUIRE
8 BENJAMIN FIELD, ESQUIRE
ONE PARKWAY BUILDING
1515 ARCH STREET
PHILADELPHIA PA 19102

9 COUNSEL FOR DEFENDANT

10
11 ADAM BONIN, ESQUIRE
121 S. BROAD STREET
SUITE 400
12 PHILADELPHIA, PA 19107

13 COUNSEL FOR DEFENDANT

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1 (CLERK OPENS COURT.)

2 THE COURT: GOOD EVENING, EVERYBODY.

3 PLEASE BE SEATED.

4 WHAT I WOULD REQUEST IS THAT IF YOU FEEL
5 COMFORTABLE DOING IT, WHEN YOU SPEAK, YOU DON'T NEED TO
6 STAND UP. BUT IF YOU SPEAK INTO THE MICROPHONE, AND IF
7 YOU COULD, IF YOU FEEL COMFORTABLE DOING IT, PULL YOUR
8 MASK DOWN AS I'M DOING NOW, BECAUSE IT'S VERY HARD TO
9 UNDERSTAND SOMEBODY WHEN HE OR SHE IS SPEAKING THROUGH A
10 MASK.

11 I GATHER THERE IS A VIDEO HOOKUP TO 15B
12 FOR THE MEDIA AND THAT THERE IS ALSO A CALL-IN NUMBER.

13 MR. MARCUS IS HERE ON BEHALF OF THE
14 PLAINTIFF. IS THAT RIGHT?

15 MR. MARCUS: YES, SIR.

16 THE COURT: YOU DON'T NEED TO STAND UP,
17 AGAIN, IF YOU CAN SPEAK INTO THE MICROPHONE. IF YOU'RE
18 COMFORTABLE WITHOUT YOUR MASK ON.

19 AND MR. WIYGUL, MS. CLAIBORNE AND
20 MR. FIELD ARE HERE FOR THE BOARD OF ELECTIONS.

21 IS THAT RIGHT?

22 MR. WIYGUL: YES, YOUR HONOR.

23 THE COURT: NICE TO SEE YOU AGAIN,
24 MR. WIYGUL.

25 MR. MARCUS. WELL, YOU HAVE YOUR

1 EMERGENCY HEARING.

2 WHAT DO YOU HAVE TO SAY ABOUT IT?

3 MR. MARCUS: FIRST OF ALL, THANK YOU VERY
4 MUCH, YOUR HONOR, FOR HEARING US ON SUCH SHORT NOTICE.

5 YOUR HONOR, THERE WAS AN ORDER ENTERED BY
6 THE COMMONWEALTH COURT IN PENNSYLVANIA THIS MORNING AT
7 AROUND 9:30 THAT MANDATED THAT MY CLIENT AND VOLUNTEERS
8 WORKING FOR MY CLIENT BE GIVEN ACCESS TO THE COUNTING
9 ROOM WHERE ABSENTEE AND MAIL-IN BALLOTS WERE BEING --

10 THE COURT: A LITTLE LOUDER AND INTO THE
11 MICROPHONE, PLEASE.

12 MR. MARCUS: AN ORDER ENTERED BY THE
13 COMMONWEALTH COURT THIS MORNING, YOUR HONOR, MANDATING
14 THAT VOLUNTEERS WORKING AND PAPERS NOW WORKING WITH AND
15 FOR MY CLIENT, THE TRUMP CAMPAIGN, BE GIVEN ACCESS TO
16 THE ROOM AT THE CONVENTION CENTER IN WHICH ABSENTEE AND
17 MAIL-IN BALLOTS WERE BEING COUNTED. THAT ORDER HAS BEEN
18 STUDIOUSLY DISOBEYED ALL DAY LONG. I WILL PUT ON
19 TESTIMONY FROM THE GENTLEMAN WHO IS SITTING HERE, JEREMY
20 MERCER, WHO IS AN OFFICIAL WITH THE CAMPAIGN. AND I CAN
21 PRODUCE AS LONG A PARADE AS THE COURT WOULD LIKE OF
22 VOLUNTEERS WHO WILL TESTIFY THAT THEY SHOWED UP AND
23 WANTED TO VOLUNTEER, THEIR NAMES WERE ON THE APPROPRIATE
24 LISTS, THEY HAD BEEN TOLD THAT THEIR NAMES HAD BEEN SENT
25 IN THE APPROPRIATE WAY, AND THEY WERE SIMPLY LEFT

1 TWIDDLING THEIR THUMBS FOR HOURS UNTIL IT BECAME CLEAR
2 THAT THEY WERE NOT GOING TO BE ADMITTED TO THE ROOM.
3 AND THEREFORE, THERE WAS NOT ADEQUATE ACCESS TO THE ROOM
4 WHERE THIS COUNTING WAS GOING ON.

5 SO THAT IS THE PROBLEM THAT WE HAVE
6 BROUGHT TO YOUR HONOR THIS EVENING.

7 THE COURT: MR. WIYGUL.

8 MR. WIYGUL: THANK YOU, YOUR HONOR. WE
9 BELIEVE THE MOTION, WHICH AS WE UNDERSTAND IT IS -- I
10 THINK IT'S A ONE-PAGE DOCUMENT STYLED AS A COMPLAINT.

11 THE COURT: LET'S BE FAIR, IT'S A PAGE
12 AND A QUARTER.

13 MR. WIYGUL: IT'S A PAGE AND A QUARTER,
14 YOUR HONOR. I BELIEVE IT'S STYLES BOTH A COMPLAINT AND
15 A MOTION FOR A TEMPORARY RESTRAINING ORDER. WE BELIEVE
16 THAT IT IS FATALLY FLAWED FOR BOTH LEGAL AND FACTUAL
17 REASONS. WE DON'T THINK YOUR HONOR ACTUALLY NEEDS TO
18 REACH THE FACTUAL QUESTIONS.

19 I'M HAPPY TO START BY GIVING JUST AN
20 OVERVIEW OF THE LEGAL FLAWS. AS I HEARD MR. MARCUS
21 EXPLAIN THEIR CONTENTION, THEY ARE SEEKING AN ORDER, I
22 PRESUME AN INJUNCTIVE ORDER OF SOME SORT, FROM THE
23 FEDERAL DISTRICT COURT TO ENFORCE A STATE COURT ORDER.

24 AND THAT IS NOT APPROPRIATE PROCEDURALLY.
25 THEY HAVE REMEDIES IN STATE COURT. I WOULD ALSO ADD, WE

1 BELIEVE THAT MR. MARCUS'S CHARACTERIZATION OF THE STATE
2 COURT PROCEEDINGS IS INCORRECT. THERE WAS AN ORDER
3 ISSUED BY THE COMMONWEALTH COURT THIS MORNING AS HE
4 NOTED. THE PHILADELPHIA BOARD OF ELECTIONS THEN
5 PROMPTLY FILED A PETITION FOR ALLOWANCE OF APPEAL TO THE
6 PENNSYLVANIA SUPREME COURT FROM THAT ORDER.

7 AND UNDER PENNSYLVANIA PROCEDURAL RULES,
8 THE FILING OF THAT PETITION OPERATES AS AN AUTOMATIC
9 SUPERSEDEAS OF THE COMMONWEALTH COURT ORDER DURING THE
10 PENDENCY OF THE PETITION, WHICH, AS FAR AS I KNOW, IS
11 STILL PENDING BEFORE THE PENNSYLVANIA SUPREME COURT.
12 THEY ORDERED BRIEFING ON THAT, AND I BELIEVE BRIEFING
13 WAS COMPLETED AROUND THE MIDDLE OF THE AFTERNOON.

14 THE COURT: WELL, LET ME BACK UP FOR JUST
15 A MINUTE.

16 ARE PEOPLE BEING KEPT OUT OF THE ROOM?

17 MR. WIYGUL: THANK YOU, YOUR HONOR, NO.

18 AND MY COLLEAGUE CAN ADDRESS MORE OF THE DETAILS OF THE
19 FACTS, BUT IT IS MY UNDERSTANDING THAT PEOPLE HAVE NEVER
20 BEEN KEPT OUT OF THE ROOM. AND, IN FACT, NOT
21 WITHSTANDING THE EFFECTIVE STAY OF THE COMMONWEALTH
22 COURT ORDER, WE BELIEVE WE HAVE BEEN COMPLYING WITH ITS
23 TERMS SINCE IT WAS ENTERED.

24 THE COURT: IF WE CAN BE A LITTLE LESS
25 ABSTRACT. HOW BIG IS THE ROOM?

1 MS. CLAIBORNE: MEGHAN CLAIBORNE FOR THE
2 CITY OF PHILADELPHIA.

3 THE COURT: NICE TO SEE YOU.

4 MS. CLAIBORNE: NICE TO SEE YOU TOO, YOUR
5 HONOR.

6 THE ACTUAL DIMENSIONS OF THE ROOM?

7 THE COURT: IS IT AS BIG AS THIS
8 COURTROOM?

9 MS. CLAIBORNE: I WOULD SAY IT'S TEN
10 TIMES LARGER THAN THE COURTROOM AT A MINIMUM.

11 THE COURT: TEN TIMES BIGGER. HOW MANY
12 PEOPLE ARE DOING THE COUNTING?

13 MS. CLAIBORNE: 150.

14 THE COURT: AND ARE OBSERVERS BEING
15 ALLOWED IN TO WATCH THE COUNTING?

16 MS. CLAIBORNE: ABSOLUTELY, YOUR HONOR.
17 AND WE DO HAVE ONE OF THE STAFF WHO WAS PRESENT ALL DAY
18 HERE TO CONFIRM THAT.

19 THE COURT: LET ME BACK UP A LITTLE MORE,
20 MR. MARCUS. I CAN'T REVIEW A STATE COURT ORDER.

21 MR. MARCUS: WE ARE NOT ASKING THE COURT
22 TO ORDER A STATE COURT ORDER, YOUR HONOR.

23 THE COURT: IT KIND OF SOUNDS LIKE YOU
24 ARE. I KNOW YOU INVOKED 1983 AND DUE PROCESS THE 14TH
25 AMENDMENT. WHAT CONSTITUTIONAL RIGHT OF WHOM IS BEING

1 INFRINGED?

2 MR. MARCUS: BOTH THE -- WELL, TO START
3 WITH, THE CAMPAIGN IS RIPE TO BE PRESENT. CAMPAIGN --

4 THE COURT: UNDER WHAT PROVISION OF
5 FEDERAL LAW OR THE CONSTITUTION?

6 MR. MARCUS: THE DUE PROCESS CLAUSE AND
7 THE EQUAL PROTECTION CLAUSE, BOTH OF WHICH WERE AT ISSUE
8 IN BUSH V. GORE. THE --

9 THE COURT: BOTH OF WHICH --

10 MR. MARCUS: -- WERE AT ISSUE IN BUSH V.
11 GORE.

12 THE PLAINTIFF WAS THE CAMPAIGN IN THAT
13 CASE.

14 THE ISSUE WAS THE FAIRNESS --

15 THE COURT: I REMEMBER. I'M OLD ENOUGH.
16 YOU'RE SPEAKING IN GREAT GENERALITIES. EQUAL
17 PROTECTION, DUE PROCESS, AND I ASK YOU WHAT -- HOW IS
18 THE CAMPAIGN BEING DENIED EQUAL PROTECTION? WHAT --

19 MR. MARCUS: IT'S NOT.

20 THE COURT: IT'S NOT?

21 MR. MARCUS: EXCUSE ME, I WAS GOING TO
22 SAY, IT IS NOT BEING GIVEN EQUAL ACCESS TO THE COUNTING.
23 AND I THINK --

24 THE COURT: WHO IS GETTING BETTER ACCESS
25 OTHER THAN THE EMPLOYEES THEMSELVES?

1 MR. MARCUS: REPRESENTATIVES OF THE
2 DEMOCRATIC PARTY.

3 THE COURT: IS THAT TRUE, MS. CLAIBORNE?

4 MS. CLAIBORNE: NO, YOUR HONOR. AGAIN,
5 TO THE BEST OF OUR KNOWLEDGE, UNLESS THERE WERE --

6 THE COURT: "TO THE BEST OF MY KNOWLEDGE"
7 AND "AS FAR AS I KNOW" REALLY WON'T WORK TONIGHT.

8 MS. CLAIBORNE: NO, YOUR HONOR. NOT A
9 SINGLE OBSERVER. TO THE EXTENT THAT AN OBSERVER WAS NOT
10 COMPORTING WITH THE RULES, I BELIEVE THAT AT LEAST ONE
11 INDIVIDUAL WAS REMOVED BECAUSE THEY WERE BEHAVING
12 INAPPROPRIATELY, TO THE EXTENT THAT THEY WEREN'T
13 SOCIALLY DISTANCING OR ANY OTHER ISSUE --

14 THE COURT: HOW CLOSE ARE THE OBSERVERS
15 GENERALLY ALLOWED TO GET TO THE COUNTERS?

16 MS. CLAIBORNE: THAT WAS AT ISSUE TODAY.
17 THERE WAS AN ORDER TOO THIS MORNING THAT THEY BE WITHIN
18 SIX FEET. WE SHUT DOWN ALL OF OUR CANVASSING ACTIVITIES
19 EXCEPT FOR THE FIRST ROW CLOSEST TO THE BARRICADE. WE
20 MOVED THE BARRICADE UP. MS. STEPHANIE REID IS HERE TO
21 TESTIFY WE GOT A TAPE MEASURE, WE MEASURED OUT SIX FEET
22 AND THEY WERE ALLOWED TO STAND AT THE BARRICADE.

23 THE COURT: IT'S OKAY. I'M NOT A LAND
24 SURVEYOR. I JUST WANTED TO KNOW.

25 MR. MARCUS, I'LL GRANT YOU, IF THERE WERE

1 A COMPLETELY IRRATIONAL DECISION THAT PEOPLE WHO WERE, I
2 DON'T KNOW, UNDER FIVE FEET OR OVER FIVE FEET AREN'T
3 ALLOWED TO OBSERVE OR PEOPLE OF A CERTAIN RACE OR
4 RELIGION ARE NOT ALLOWED TO OBSERVE, I'D STILL HAVE
5 TROUBLE FIGURING OUT WHAT THE CONSTITUTIONAL INJURY IS,
6 BUT AT LEAST THERE WOULD BE SOME SORT OF A
7 DISCRIMINATION.

8 THEY'RE SAYING THAT YOUR PEOPLE ARE IN
9 THAT ROOM. ARE THEY IN THAT ROOM OR NOT? DOWN.

10 MR. MARCUS: DOWN. THEY ARE NOT BEING
11 GIVEN EQUAL ACCESS TO THE ROOM.

12 YOUR HONOR, I THINK --

13 THE COURT: EQUAL ACCESS IS REALLY -- ARE
14 THEY IN THE ROOM?

15 MR. MARCUS: THERE ARE NON -- THERE IS A
16 NONZERO NUMBER OF PEOPLE IN THE ROOM. THEY ARE NOT
17 BEING GIVEN --

18 THE COURT: NONZERO NUMBER OF PEOPLE.
19 DON'T KNOW WHAT THAT IS EITHER.

20 MR. MARCUS: MAY I RESPECTFULLY MAKE A
21 SUGGESTION, YOUR HONOR?

22 THE COURT: SURE.

23 MR. MARCUS: THE OTHER SIDE AND WE HAVE
24 WHAT I THINK IS A FACTUAL DISAGREEMENT ABOUT WHAT'S
25 ACTUALLY GOING ON.

1 THE COURT: I'M ASKING YOU AS A MEMBER OF
2 THE BAR OF THIS COURT, ARE PEOPLE REPRESENTING THE
3 DONALD J. TRUMP FOR PRESIDENT, REPRESENTING THE
4 PLAINTIFF, IN THAT ROOM?

5 MR. MARCUS: YES.

6 THE COURT: I'M SORRY, THEN WHAT'S YOUR
7 PROBLEM?

8 MR. MARCUS: THEY'RE NOT BEING GIVEN
9 EQUAL ACCESS TO THE ROOM. THEY'RE NOT BEING GIVEN
10 ACCESS TO -- THE FACTUAL REPRESENTATION THAT THEY WERE
11 WITHIN SIX FEET IS NOT ACCURATE, AS MY CLIENT WILL
12 TESTIFY. THEY CAN'T SEE --

13 THE COURT: HOW MANY FEET ARE THEY AWAY?

14 MR. MARCUS: AT ALL TIMES, YOUR HONOR, A
15 DISTANCE GREATER THAN ONE COULD ACTUALLY SEE. THE
16 DISTANCE VARIED BETWEEN 100 FEET AND 30 FEET.

17 THE COURT: ONE COULD ACTUALLY SEE WHAT?

18 MR. MARCUS: WHAT WAS ACTUALLY GOING ON.
19 THE PURPOSE OF HAVING THE OBSERVERS THERE IS SO THAT
20 THEY CAN OBSERVE THE OPENING OF INDIVIDUAL BALLOTS, THE
21 CHECKING OF SIGNATURES, THE SECURITY --

22 THE COURT: YOU CAN'T SEE FROM 30 FEET IF
23 AN ENVELOPE IS BEING OPENED? YOU'RE 30 FEET FROM ME
24 RIGHT NOW.

25 MR. MARCUS: CORRECT.

1 THE COURT: YOU DON'T THINK I CAN -- AND
2 BELIEVE ME, YOU WOULDN'T WANT ME PILOTING YOUR AIRCRAFT
3 WITH THESE 67-YEAR OLD EYES, BUT I COULD SEE IF YOU WERE
4 OPENING AN ENVELOPE AND LOOKING AT IT?

5 MR. MARCUS: YOU COULD SEE IF I WAS
6 OPENING AN ENVELOPE.

7 THE COURT: WHAT MORE DO THEY HAVE TO DO?
8 THEY'RE NOT GOING TO BE ALLOWED TO STAND OVER THEIR
9 SHOULDERS.

10 MR. MARCUS: NO. BUT THEY HAVE TO BE
11 GIVEN THE RIGHT TO SEE THE SIGNATURE, TO SEE WHETHER THE
12 SIGNATURE MATCHES THE SIGNATURE IN THE BOOK, TO SEE --

13 THE COURT: THEY WOULD HAVE TO BE CLOSER
14 THAN SIX FEET TO DO THAT.

15 MR. MARCUS: THE RULE WAS SIX FEET. SIX
16 FEET --

17 THE COURT: I UNDERSTAND. BUT WE HAVE A
18 VIRUS OUT THERE THAT THERE HAVE TO BE MORE ROOM -- I'M
19 SORRY, THERE WOULD BE LESS ROOM THAN SIX FEET. I DON'T
20 KNOW IF IT'S SAFE.

21 MS. CLAIBORNE, MR. WIYGUL, AGAIN, I'M NOT
22 A LAND SURVEYOR, I DON'T KNOW THAT I HAVE JURISDICTION
23 TO HEAR THIS. I JUST DECIDED WE SHOULD HAVE A HEARING
24 BECAUSE IT DOES SEEM TO ME THAT THE WHOLE THING IS GOING
25 TO BE MOOT IF WHAT I READ ON THE INTERNET IS CORRECT,

1 WHICH IS THAT THE COUNT IS GOING TO BE COMPLETED
2 SOMETIME SOON, WHATEVER THAT IS.

3 DOES THAT SOUND RIGHT, MS. CLAIBORNE?

4 MS. CLAIBORNE: IT IS, YOUR HONOR. BUT,
5 I MEAN, I DO THINK IT IS IMPORTANT TO CORRECT THE
6 FACTUAL RECORD THAT --

7 THE COURT: I COULDN'T AGREE WITH YOU
8 MORE. AND I CAN HEAR TESTIMONY FROM SOMEONE WHO SAYS
9 THEY ARE THIS MANY FEET AND THEN I'LL HEAR TESTIMONY
10 FROM SOMEONE ELSE THAT SAYS THEY'RE THIS MANY FEET.
11 REALLY, CAN WE BE RESPONSIBLE ADULTS HERE AND REACH AN
12 AGREEMENT AS TO HOW FAR ALL OBSERVERS, NOT JUST -- NOT
13 JUST MR. MARCUS'S CLIENTS, ALL OBSERVERS ARE ALLOWED TO
14 STAND?

15 MR. CLAIBORNE: WE ARE HAPPY TO DO THAT,
16 YOUR HONOR, BUT THAT HAS ALREADY BEEN ADDRESSED, AND WE
17 ARE IN COMPLIANCE.

18 THE COURT: THAT'S -- THAT'S --

19 MR. CLAIBORNE: WE ARE CERTAINLY HAPPY --
20 IF HE WANTS SIX FEET, WE'RE AGREEING TO SIX FEET, THAT'S
21 WHAT IT IS, WE WOULD ALLOW THAT TO CONTINUE GOING AND WE
22 WOULD REALLY HOPE THAT THE RECORD WOULD REFLECT THAT SO
23 THAT IS NO MISINTERPRETATION OF WHAT'S GOING ON, AND HE
24 DOESN'T WALK OUT OF HERE AND SAY THAT WE'RE KEEPING THEM
25 30 TO 100 FEET AWAY. THEY ARE ALLOWED UP TO SIX FEET

1 AWAY AT THE BARRICADE, AND THAT'S HOW IT HAS BEEN ALL
2 DAY.

3 THE COURT: I REALLY WOULD LIKE -- YOU'RE
4 A LAWYER, AND YOU DON'T HAVE THE AUTHORITY -- LOOK, YOU
5 MAY BE RUNNING THE CITY SOLICITOR'S OFFICE, I DON'T
6 KNOW, BUT YOU DON'T HAVE THE AUTHORITY TO TELL THE
7 PEOPLE WHERE TO STAND. WHO DOES? I WOULD LIKE A NAME.

8 MR. CLAIBORNE: AT THIS POINT I WOULD SAY
9 THE COMMONWEALTH COURT WHICH HAS ALREADY ISSUED AN ORDER
10 TO THAT EFFECT TODAY, BUT WE CERTAINLY HAVE --

11 THE COURT: I'M TRYING TO AVOID THE NEED
12 TO DO ANYTHING SIMPLY BY HAVING THE PARTIES REACH AN
13 AGREEMENT ON THE RECORD.

14 IF I WERE BROKERING A SETTLEMENT, WHICH
15 I'M NOT, WE WOULD HAVE SOMEBODY, SOME CLIENT
16 REPRESENTATIVE OTHER THAN A LAWYER. WHO WOULD THAT BE?
17 THE HEAD OF THE BOARD OF ELECTIONS?

18 YES, MR. FIELD, NICE TO SEE YOU TOO.

19 MR. FIELD: NICE TO SEE YOU TOO. I DO
20 THAT ALL THE TIME. IT'S AWKWARD IN THESE TIMES, YOUR
21 HONOR. NICE TO SEE YOU.

22 SO I DO REPRESENT THE BOARD OF ELECTIONS.
23 AND THE BOARD IS A THREE MEMBER BOARD. TO THE EXTENT
24 YOUR HONOR IS ASKING THE QUESTION IN TERMS OF THEIR
25 REGULATIONS --

1 THE COURT: NO. I'M ASKING SOMEBODY WITH
2 DECISION-MAKING AUTHORITY TO SAY TO ME, THEY WILL -- TO
3 ME, MR. FEDERAL JUDGE, WE ARE GOING TO LET PEOPLE STAND
4 WITHIN X FEET. SIX FEET HAPPENS TO BE THE NUMBER THAT
5 HAS BEEN PICKED I ASSUME BECAUSE THAT IS GENERALLY WHAT
6 YOU SEE IN EVERY SUPERMARKET AND EVERYWHERE YOU GO, THAT
7 IS CONSIDERED A SAFE DISTANCE MOSTLY. IF IT'S TEN FEET,
8 IT'S TEN FEET. WHATEVER IT IS, I WOULD LIKE SOMEONE TO
9 SAY TO ME, JUDGE, ANYONE WHO WANTS TO WATCH, PROVIDING
10 THEY STAY DISTANT FROM EACH OTHER, BECAUSE THEY HAVE TO
11 STAND AT LEAST SIX FEET APART FROM EACH OTHER, CAN GET
12 AS CLOSE AS X FEET AND SAY THAT TO ME ON THE RECORD
13 HERE. CAN WE DO THAT?

14 YOU'RE SHAKING YOUR HEAD, MS. CLAIBORNE.
15 CAN WE DO THAT?

16 MR. FIELD: SO I CAN EXPLAIN A LITTLE
17 BIT --

18 THE COURT: IF IT'S ALREADY BEING DONE, I
19 DON'T KNOW WHY WE CAN'T DO THAT.

20 MR. FIELD: WE CAN TRY AND ARRANGE FOR A
21 WITNESS, ONE OF THE DEPUTIES OF THE COMMISSIONERS
22 RESPONSIBLE FOR OVERSEEING THE AREA TO COME IN, BUT JUST
23 TO EXPLAIN, AT THE BEGINNING OF THE PRE-CANVASS, THE
24 BARRICADE THAT HAS BEEN DISCUSSED, WHICH CORDONS OFF THE
25 AREA OF THE OBSERVERS ARE IN TO MAKE SURE THAT THE AREA

1 THAT THE BALLOTS ARE BEING WORKED ON IS SAFE, SECURE,
2 BALLOTS ARE NOT, YOU KNOW, IN A POSITION WITH THE PUBLIC
3 AROUND THEM, VOTER SECRECY AND ALL THOSE THINGS --

4 THE COURT: TRULY, MR. FIELD, I'M NOT
5 TELLING YOU HOW TO DO THIS, I'M NOT TELLING YOUR CLIENT
6 HOW TO DO THIS. SIX FEET HAPPENS TO BE THE NUMBER OF
7 FEET THAT HAS BEEN MENTIONED. YOU WANT TO DO TEN FEET,
8 YOU WANT TO DO 20 FEET, AS LONG AS EVERYONE IS HELD TO
9 THE SAME STANDARD, AND THAT IS WHAT I'M TOLD, I DON'T
10 HAVE TO GET INTO A QUESTION OF WHETHER I HAVE TO ABSTAIN
11 BECAUSE THIS APPEARS TO BE AN APPEAL FROM A STATE COURT
12 ORDER. I DON'T HAVE TO ADDRESS WHETHER OR NOT THERE IS
13 A FEDERAL RIGHT AT ISSUE HERE OR WHETHER THERE IS A
14 FEDERAL INJURY, BECAUSE THIS IS WHAT YOU'VE REPRESENTED.
15 THIS IS WHAT EVERYONE IS GOING TO BE HELD TO. AND SO
16 THAT MR. MARCUS HAS NO COMPLAINT AT THAT POINT TO MAKE
17 ABOUT IT -- WELL, HE MAY WANT TO STAND CLOSER, WHICH IS
18 NOT A CONSTITUTIONAL RIGHT AS FAR AS I CAN TELL.

19 MR. FIELD: SO I WILL -- IF I MIGHT, YOUR
20 HONOR, PUT IT ON THE RECORD.

21 I CAN BRING A WITNESS TO THIS, BUT I
22 WANT --

23 THE COURT: WHAT I WOULD LIKE YOU TO DO,
24 I WOULD LIKE TO TAKE A BRIEF RECESS AND I WOULD LIKE YOU
25 TO SPEAK WITH MR. MARCUS FROM A SAFE DISTANCE AND DECIDE

1 WHAT THE AMOUNT OF SPACE IS AND WHAT EVERYONE IS GOING
2 TO BE HELD TO. THEN I'M GOING TO WANT YOU TO GET
3 SOMEONE ON THE PHONE WHO CAN MAKE THE DECISION WHO WILL
4 STATE HERE ON THE RECORD THAT THAT -- THIS IS -- WE ARE
5 GOING TO HONOR THAT. AND THAT IS WHAT WE ARE GOING TO
6 DO WITH RESPECT TO EVERYBODY.

7 LOOK, I DON'T KNOW THAT ANYBODY HAS A
8 RIGHT TO STAND WITHIN A PARTICULAR DISTANCE, ALTHOUGH IT
9 DOES SEEM TO ME THAT IF THE CITY WERE TO SAY PEOPLE OF
10 ONE RACE STAND THIS DISTANCE, PEOPLE WITH ANOTHER RACE
11 STAND ANOTHER DISTANCE, I'M NOT SAYING THAT'S WHAT'S
12 GOING ON. I'M SAYING THAT IF I WERE A LAW PROFESSOR, I
13 COULD PROBABLY THEORETICALLY THINK OF SOMETHING THAT
14 WOULD GET MR. MARCUS INTO COURT HERE, ALTHOUGH THAT DOES
15 SEEM SORT OF TENUOUS TO ME.

16 BUT IF, IN FACT, THE CITY IS PREPARED --
17 A DECISION-MAKER WITH A NAME IS PREPARED TO SAY, WE WILL
18 ALLOW EVERYBODY TO STAND NO CLOSER THAN X FEET, THEN I
19 WILL ASK MR. MARCUS, WHERE IS THE QUIBBLE? WHY ISN'T
20 THAT ENOUGH?

21 MR. FIELD: VERY WELL.

22 THE COURT: CAN WE DO THAT?

23 MR. FIELD: WE CAN DO THAT.

24 MR. MARCUS: YOUR HONOR, MAY I ASK,
25 THERE'S ONE OTHER DIMENSION TO THIS PROBLEM.

1 THE COURT: LENGTH AND WIDTH AND DEPTH?

2 NO, A DIFFERENT DIMENSION. TIME AND SPACE, NO.

3 MR. MARCUS: NUMBER OF HUMAN BEINGS,
4 BECAUSE ONE OF THE SIGNIFICANT ISSUES IS THAT A GREAT
5 NUMBER OF PEOPLE -- AND I OBSERVED THIS MYSELF
6 PERSONALLY AND I HAVE WITNESSES WHO WILL TESTIFY, WHO
7 HAVE THE LEGAL RIGHT TO BE THERE, WERE SIMPLY BEING
8 TOLD, I'M SORRY, WE CAN'T FIND YOUR NAME. THE E-MAIL
9 DIDN'T ARRIVE WHEN WE KNOW THE E-MAIL WAS SENT. SO
10 THERE WERE DOZENS OF PEOPLE WHO WERE SUPPOSED TO BE
11 OBSERVERS WHO WERE SIMPLY NOT IN THE ROOM.

12 THE COURT: I DON'T KNOW HOW MANY PEOPLE
13 CAN FIT. HOW MANY -- SINCE YOU REPRESENT YOUR CLIENTS
14 AND NO ONE ELSE, HOW MANY OF YOUR CLIENT REPRESENTATIVES
15 WISH TO BE IN THAT ROOM?

16 MR. MARCUS: WE WANT THE SAME NUMBER AS
17 THE OTHER SIDE HAS, YOUR HONOR.

18 THE COURT: COME ON, COME ON, COME ON,
19 HONESTLY, HONESTLY, YOU GOT TO DO BETTER THAN THAT.

20 PLEASE. PLEASE, SIR. I DON'T KNOW WHO
21 YOU ARE, BUT DON'T LAUGH.

22 HOW MANY?

23 MR. MARCUS: 25 PEOPLE.

24 THE COURT: CAN YOU ACCOMMODATE THEM,
25 MR. FIELD?

1 MR. FIELD: YOUR HONOR, THERE ARE
2 STATUTORY REQUIREMENTS REGARDING HOW MANY PEOPLE CAN BE
3 IN THE ROOM AT A TIME. THEY CAN APPOINT MORE, SO --

4 THE COURT: ARE THERE PARTICULAR GROUPS
5 THAT ARE ALLOWED IN THE ROOM, OR CAN I -- ANYBODY JUST
6 WALK IN AND SAY I WANT --

7 MR. FIELD: NO. TWO POINTS ON THAT, YOUR
8 HONOR. ONE IS THE ELECTION CODE, THE PENNSYLVANIA
9 ELECTION CODE SAYS THAT THEY CAN APPOINT OBSERVERS.

10 THE COURT: YOU MEAN THE POLITICAL
11 PARTIES CAN APPOINT OBSERVERS?

12 MR. FIELD: SO THE MAJOR POLITICAL
13 PARTIES AND EACH CANDIDATE IN THE ROOM AT ANY TIME IS
14 ONE UP TO ONE PER CANDIDATE PLUS THREE FOR THE PARTY.

15 THE COURT: SO THESE ARE OBVIOUSLY
16 CANDIDATES, ALTHOUGH YOU ALMOST WOULDN'T KNOW IT TO LOOK
17 AT THE INTERNET, OTHER THAN PRESIDENTIAL CANDIDATES.
18 THERE ARE REPRESENTATIVES OF -- HOW MANY CANDIDATES ARE
19 IN THAT ROOM AS FAR AS YOU CAN TELL?

20 MR. FIELD: THERE ARE FEWER
21 REPRESENTATIVES THAN TOTAL CANDIDATES. I THINK THERE
22 WERE 57 CONTESTS ON THE BALLOT IN THE CITY OF
23 PHILADELPHIA IN THIS ELECTION. 59, EXCUSE ME.

24 THE COURT: HOW MANY REPRESENTATIVES OF
25 THE DEMOCRATIC PARTY.

1 MR. FIELD: COUNSEL FOR THE DEMOCRATIC
2 PARTY IS OVER HERE. I WOULD TURN TO HIM ON THAT.

3 THE COURT: COULD YOU IDENTIFY YOURSELF.

4 MR. BONIN: GOOD EVENING, YOUR HONOR.
5 ADAM BONIN.

6 THE COURT: I'VE NEVER MET HIM, BUT I
7 THINK MR. BONIN USED TO LIVE ON MY BLOCK. YES.

8 MR. BONIN: IT'S ENTIRELY POSSIBLE,
9 JUDGE. AND WE CAN SPEAK ABOUT THAT OFF THE RECORD AT A
10 LATER POINT.

11 I'M HERE ON BEHALF OF THE DEMOCRATIC
12 PARTY. WE PARTICIPATED IN THE PROCEEDINGS. WE ARE
13 PARTICIPATING IN THE PROCEEDINGS ON THE STATE COURT
14 LEVEL. WE -- YOU KNOW, WE HAVE -- YOU KNOW, WE HAVE
15 JUST AS MANY -- YOU KNOW, WE HAVE THE RIGHT TO HAVE
16 ONE --

17 THE COURT: PLEASE. I DON'T WANT TO HEAR
18 ABOUT --

19 MR. BONIN: HOW MANY PEOPLE DO WE HAVE?
20 WE HAVE HAD.

21 THE COURT: SIR, SIR, PLEASE. I REALLY
22 DON'T -- I REALLY WOULD TRY TO -- LIKE TO MAKE THIS AS
23 SIMPLE AS POSSIBLE.

24 IS THERE A TOTAL NUMBER -- MS. CLAIBORNE,
25 IS THERE A TOTAL NUMBER ABOVE WHICH IT WOULDN'T BE SAFE?

1 MS. CLAIBORNE: I DO NOT --

2 THE COURT: MR. FIELD, IS THERE A TOTAL
3 NUMBER ABOVE WHICH IT WOULDN'T BE SAFE? YOU DON'T KNOW.

4 MR. FIELD: I DON'T KNOW HOW MANY --

5 THE COURT: HOW MANY PEOPLE -- CAN YOU
6 ESTIMATE HOW MANY PEOPLE ARE OBSERVING RIGHT NOW AS YOU
7 SIT HERE LAST TIME YOU LOOKED?

8 MR. FIELD: I THINK THERE'S PROBABLY BEEN
9 ABOUT 30 TO 40 OBSERVERS IN THE OBSERVER AREA DURING THE
10 DAY AND THAT IS FINE.

11 THE COURT: HOW MANY OF THOSE DO YOU
12 IDENTIFY AS BEING REPRESENTED BY MR. MARCUS?

13 MR. FIELD: I WOULD NOT KNOW THE ANSWER
14 TO THAT.

15 THE COURT: SOME?

16 MR. FIELD: CERTAINLY -- HIS TESTIMONY
17 SOME.

18 THE COURT: IS THERE ROOM FOR MORE THAN
19 30 AS FAR AS YOU CAN TELL?

20 MR. FIELD: SO I BELIEVE THERE IS ROOM
21 FOR MORE THAN 30.

22 THE COURT: 40?

23 MR. FIELD: PROBABLY MORE THAN 40, YOUR
24 HONOR, BUT CAN --

25 THE COURT: 50?

1 MR. FIELD: CAN I MAKE ONE POINT HERE,
2 YOUR HONOR?

3 THE COURT: 50? DO I HEAR 50?

4 MR. FIELD: YOU CAN HAVE 52.

5 THE COURT: OKAY. GOOD AHEAD.

6 MR. FIELD: 52, MAYBE 53. I DON'T KNOW
7 AT WHAT POINT SOCIAL DISTANCING WOULD BECOME AN ISSUE.

8 THE COURT: THAT'S WHAT I'M ASKING.
9 THAT'S WHAT I'M ASKING.

10 MR. FIELD: I DON'T THINK WE ARE NEAR
11 THAT NUMBER. WHAT I WOULD LIKE TO SAY IS THE BOARD LAST
12 WEDNESDAY, SO ON THE 28TH OF OCTOBER, PROMULGATED
13 PROCEDURES. AND THOSE PROCEDURES REQUIRED PEOPLE TO
14 SEND IN NAMES AND ADDRESSES TO CREDENTIALLED OBSERVERS,
15 BECAUSE THERE ARE SECURITY PROTOCOLS.

16 THE COURT: I UNDERSTAND THAT. AND ALL
17 OF THE SECURITY IS GOING TO GO THROUGH MR. MARCUS. AND
18 THAT IS TO SAY, HE IS GOING TO IDENTIFY THE PEOPLE HE
19 WANTS IN THERE. HE IS GOING TO TELL YOU. AND YOU'RE
20 GOING TO TELL YOUR CLIENT. AND THAT IS HOW IT'S GOING
21 TO WORK. IF YOUR CLIENT HAS A PROBLEM WITH A PARTICULAR
22 OBSERVER BECAUSE HE OR SHE HAS A CRIMINAL RECORD;
23 BECAUSE, I DON'T KNOW WHAT IS CONSIDERED INAPPROPRIATE
24 BEHAVIOR, MS. CLAIBORNE REFERRED TO SOMEBODY ACTING
25 INAPPROPRIATELY. IF SOMEONE IS ACTING OUT, IS ACTING

1 NUTS, SOMEONE NUTS, THAT MIGHT BE -- THESE DAYS IT MIGHT
2 BE APPROPRIATE BEHAVIOR, BUT OTHERWISE, HE'S GOING TO
3 TELL YOU -- I'M GOING TO SAY THAT EACH SIDE CAN HAVE 30
4 PEOPLE. HE CAN HAVE 30 PEOPLE PRESENT AND THERE CAN BE
5 30 ADDITIONAL PEOPLE PRESENT. AND HOWEVER MANY THAT IT
6 IS SAFE TO STAND WITHIN WHATEVER DISTANCE YOUR CLIENT
7 HAS DECIDED IS A SAFE DISTANCE. IF IT'S SIX FEET, IT'S
8 SIX FEET. IF IT'S TEN FEET, IT'S WHATEVER YOU DECIDE,
9 AS LONG AS EVERYONE IS BEING TREATED THE SAME. HOWEVER
10 MANY PEOPLE CAN STAND IN THAT FRONT BARRIER HAVE TO BE
11 AN EQUAL NUMBER FROM EACH SIDE. OTHERWISE, THEY CAN
12 JUST KIND OF MILL AROUND AND HAVE COFFEE.

13 DOES THAT WORK?

14 MR. FIELD: SO IN PRACTICE I THINK THAT
15 WORKS. I DO WANT TO POINT OUT, YOUR HONOR, THAT THERE
16 ARE QUESTIONS ABOUT JURISDICTION. AND IT'S HARD FOR ME
17 TO BIND MY CLIENT TO THINGS THAT THE ELECTION CODE
18 DOESN'T REQUIRE.

19 NOW, I THINK THERE'S AN EASY ANSWER TO
20 THAT, BECAUSE CERTAINLY THEY CAN DESIGNATE --

21 THE COURT: MY GUESS IS THAT BY TOMORROW
22 AT THIS TIME, ALL OF THIS IS GOING TO BE MOOT.

23 MR. FIELD: I KNOW, BUT I HAVE TO
24 PROPERLY REPRESENT MY CLIENT.

25 THE COURT: YOU'RE BEING A LAWYER. I

1 UNDERSTAND. IT'S AN OCCUPATIONAL HAZARD. I JUST -- IF
2 YOUR CLIENT, BY NAME, CAN AGREE TO THIS. THIS IS JUST
3 SOMETHING I PULLED OUT OF MY EAR WHILE I'M SITTING HERE,
4 30 AND 30. IF ONLY 10 AND 10 CAN STAND AT THE FRONT
5 RAILING TO WATCH FROM A DISTANCE OF HOWEVER LONG,
6 HOWEVER FAR YOUR CLIENT THINKS IS SAFE, THEN THAT IS
7 WHAT WE'LL DO IF YOU AGREE TO IT AND WE CAN OBVIATE THE
8 NEED FOR ANYTHING MORE.

9 YES, MS. CLAIBORNE?

10 MS. CLAIBORNE: YOUR HONOR, I THINK THAT
11 THE ONLY REMAINING ISSUE -- ONE OF THE REMAINING ISSUES
12 WITH THAT WOULD BE THAT -- UNFORTUNATELY MY CO-COUNSEL
13 HERE WAS PREPARED TO ELOQUENTLY ARGUE THIS AND IT DOES
14 NOT SEEM THAT HE WILL NEED TO. BUT THIS ISSUE IS STILL
15 AT LEAST PARTIALLY PENDING BEFORE THE SUPREME COURT OF
16 PENNSYLVANIA RIGHT NOW. AND AS PART OF THE ISSUE IS
17 THAT THEY HAVE NOW SOUGHT --

18 THE COURT: YOU'RE NOT -- LOOK, I'M NOT
19 GETTING INTO THEIR HAIR.

20 MS. CLAIBORNE: WELL, THE ISSUE IS THAT
21 WE MIGHT COME TO AN AGREEMENT BEFORE YOUR HONOR AND THEN
22 HAVE INCONSISTENT RULING TODAY.

23 THE COURT: IF IT IN FACT MOOTS THE
24 DISPUTE BEFORE THE STATE SUPREME COURT, THEN AND --
25 MR. FIELD IS SHAKING HIS HEAD. BUT IF IT MOOTS THE

1 DISPUTE BEFORE THE STATE SUPREME COURT, YOU'RE FREE TO
2 TELL THE STATE SUPREME COURT ORDER, IF IT ALTERS THE
3 POSTURE BEFORE THE STATE SUPREME COURT, YOU'RE FREE TO
4 TELL THAT. JUST SAY THAT IN AN EFFORT TO RESOLVE THE
5 DISPUTE IN FEDERAL COURT, HERE IS WHAT WE HAVE AGREED
6 TO, AND JUST LEAVE IT AT THAT. IS THERE -- I MEAN,
7 LOOK, I DON'T KNOW WHEN THE STATE SUPREME COURT IS GOING
8 TO ACT. I CLERKED FOR IT 40 YEARS AGO. I DON'T
9 REMEMBER THEM AT LEAST IN THOSE DAYS ACTING WITH
10 PARTICULAR ALACRITY, BUT IT'S 40 YEARS, THINGS MIGHT
11 CHANGE. THEY MAY ACT ON IT LATER TODAY. THEY MAY ACT
12 ON IT TOMORROW MORNING. YOUR AGREEING TO THIS AT THE
13 REQUEST OF THE FEDERAL COURT TO OBVIATE THE NEED TO FILE
14 BRIEFS AND CALL WITNESSES IN THIS MATTER.

15 IF THAT IS TRUE, FINE. AND IF IT'S NOT,
16 THEN I WILL DEAL WITH THAT TOO. YOU'RE NOT WAIVING
17 ANYTHING. I WANT TO BE AWFULLY CLEAR ABOUT THIS.
18 YOU'RE NOT WAIVING ANYTHING BY AGREEING TO A TEMPORARY
19 RESOLUTION OF THIS TO OBVIATE THE NEED FOR LITIGATION
20 AND TAKING PEOPLE AWAY FROM -- AS I UNDERSTAND IT, THERE
21 ARE PEOPLE WHO HAVE TO TESTIFY HERE WHO SHOULD BE
22 COUNTING BALLOTS. I MUCH RATHER THEY WERE COUNTING
23 BALLOTS -- NOT THAT I DON'T ENJOY THE COMPANY OF
24 STRANGERS, BUT I WOULD MUCH RATHER THEY BE COUNTING
25 BALLOTS THAN COMING HERE TO TESTIFY IF THAT WERE

1 POSSIBLE.

2 IT SEEMS TO ME THAT IF WE COULD AVOID
3 LITIGATION HERE AND JUST AGREE TO A PROCESS, THAT WOULD
4 BE A GOOD THING.

5 YES, MR. FIELD?

6 MR. FIELD: I WAS GOING TO SUGGEST, YOUR
7 HONOR, THAT IF WE HAVE A MINUTE TO TALK TO MY CO-COUNSEL
8 AND THEN MR. MARCUS.

9 THE COURT: AND I WOULD REALLY URGE YOU
10 ALL TO TRY TO BE REASONABLE AND TO BEAR IN MIND THAT THE
11 BATTLE OF THE BULGE, AT LEAST THIS PART OF IT, IS GOING
12 TO END UNDOUBTEDLY WITHIN A DAY OR SO. AND IF THERE IS
13 A WAY TO AVOID A LOT OF WHEEL SPINNING BETWEEN NOW AND
14 THEN, I WOULD THINK -- WHERE NO ONE IS PREJUDICED, I
15 WOULD THINK THAT WOULD BE -- AND BY THE WAY, MR. MARCUS,
16 IF THERE ARE REPUBLICAN CANDIDATES WHO WANT TO HAVE
17 THEIR REPRESENTATIVES PRESENT TO WATCH, THAT COMES OUT
18 OF YOUR 30.

19 MR. MARCUS: YES, SIR.

20 THE COURT: AND IF THERE ARE DEMOCRATIC
21 CANDIDATES WHO WANT TO HAVE THEIR REPRESENTATIVES WATCH,
22 THAT COMES OUT OF YOUR 30.

23 MR. BONIN: OF COURSE, YOUR HONOR.

24 THE COURT: SORRY MR. BONIN.

25 MR. BONIN: JUST TO BE CLEAR, I MEAN,

1 THAT IS HOW WE'VE BEEN DOING -- WE HAVE AUTHORIZATIONS
2 FROM THE VARIOUS DEMOCRATIC CANDIDATES WHO ARE ON THE
3 BALLOT HERE. THAT'S HOW WE KEEP TO IT THE ONE PER
4 CANDIDATE.

5 THE COURT: I REALLY DON'T WANT TO BE ON
6 A FOOL'S ERRAND HERE, BUT IT DOES SEEM TO ME THIS IS --
7 THE NEXT FEW DAYS, IF NOT WEEKS, THERE IS GOING TO BE A
8 LOT MORE HEAT THAN LIGHT GENERATED. AND I WOULD SIMPLY
9 LIKE TO AVOID A DISPUTE IF IN FACT THERE REALLY IS NO
10 DISPUTE. IF THE PRESIDENTIAL CAMPAIGN, REELECTION
11 CAMPAIGN, CAN BE PRESENT AND THE BOARD OF ELECTIONS, THE
12 CITY -- THE DEMOCRATIC PARTY DOESN'T FEEL IT IS BEING
13 PREJUDICED BY THEIR PRESENCE, AND THAT THE LAW IS BEING
14 COMPLIED WITH, I DON'T KNOW WHY WE CAN'T JUST AGREE TO
15 THAT.

16 MR. BONIN: ALL WE WANT IS, YOU KNOW, TO
17 BE IN THE ROOM FOR THESE DISCUSSIONS, MAKE SURE WE
18 CONTINUE TO HAVE EQUAL ACCESS.

19 AND I DO HAVE TO SAY THAT I WAS BOTHERED
20 BY MR. MARCUS'S REPRESENTATION THAT SOMEHOW DEMOCRATIC
21 REPRESENTATIVES HAD ANY KIND OF SUPERIOR ACCESS TO
22 ANYONE ELSE.

23 THE COURT: LISTEN, LISTEN. I CAN GET
24 INTO -- THIS IS WHAT I WANT TO AVOID. AS WE USED TO
25 SAY, WHO STRUCK WHOM AND ALL OF THAT KIND OF STUFF. I

1 DON'T WANT TO CHALLENGE ANYONE'S GOOD FAITH. YOU'RE ALL
2 OFFICERS OF THE COURT. AND YOU'RE ALL WELL-KNOWN
3 LAWYERS AND WELL-RESPECTED LAWYERS. I WOULD SIMPLY ASK
4 YOU TO SEE IF YOU CAN WORK THIS OUT REASONABLY.

5 I WILL BE ON THE OTHER SIDE OF THAT DOOR
6 WAITING FOR YOU TO TELL ME WHAT YOU WANT TO DO. OKAY?

7 MR. MARCUS: THANK YOU, YOUR HONOR.

8 THE CLERK: ALL RISE.

9 (COURT IS NOW IN SESSION.)

10 THE COURT: PLEASE BE SEATED, EVERYBODY.
11 WHO WOULD LIKE TO SPEAK?

12 MR. MARCUS: I WOULD LIKE TO SPEAK, YOUR
13 HONOR.

14 THE COURT: ALL RIGHT, MR. MARCUS.

15 MR. MARCUS: I HAVE A VERY ROUGH SKETCH
16 OF THE ROOM. AND I WANT TO EXPLAIN TO THE COURT WHAT IT
17 IS THAT THE DEFENDANTS HAVE OFFERED AND WHY IT IS NOT
18 ACCEPTABLE TO THE PLAINTIFF.

19 THE COURT: YES. WHAT IS THE DEFENDANT
20 OFFERING?

21 MR. MARCUS: SO MAY I HAND THIS UP?

22 THE COURT: OKAY.

23 MR. MARCUS: AS YOUR HONOR WILL SEE --

24 THE COURT: THIS IS YOUR ARTWORK?

25 MR. MARCUS: THAT IS MY CLIENT'S ARTWORK.

1 THAT IS WHY MY CLIENT DOESN'T MAKE A LIVING AS A LAWYER.

2 THE COURT: WHOEVER WROTE THIS, DON'T
3 QUIT YOUR DAY JOB.

4 MR. MARCUS: SO THE LONG RED LINE THAT
5 GOES ALL OF THE WAY DOWN THE SIDE IS THE BARRICADE.

6 THE COURT: THAT'S THE BARRICADE HERE
7 (INDICATING)?

8 MR. MARCUS: CORRECT.

9 THE COURT: THE LITTLE LINES BELOW THAT,
10 IF YOU'RE HOLDING THE PAPER THE RIGHT WAY, ARE TABLES.

11 MR. MARCUS: AS YOUR HONOR WILL SEE,
12 THERE ARE TABLES IN ROWS.

13 THE COURT: YES.

14 MR. MARCUS: THE FIRST TABLE IS SIX FEET
15 FROM THE BARRICADE.

16 THE COURT: YES.

17 MR. MARCUS: INITIALLY THOSE WERE THE
18 ONLY TABLES THAT WERE PRESENT.

19 THE COURT: YES.

20 MR. MARCUS: EVERYBODY WAS HAPPY.

21 THE COURT: YES.

22 MR. MARCUS: THEN THE DEFENDANT SET UP
23 OTHER TABLES BEHIND THOSE TABLES.

24 THE COURT: PRESUMABLY BECAUSE THERE ARE
25 A LOT OF VOTES TO COUNT AND THEY NEEDED TO HAVE MORE

1 TABLES?

2 MR. MARCUS: CORRECT.

3 THE COURT: AND YOU WANT TO HAVE PEOPLE
4 WITHIN SIX FEET OF EACH SET OF TABLES?

5 MR. MARCUS: CORRECT. AND --

6 THE COURT: NO. I'M SORRY. I'M A
7 FEDERAL COURT -- YOU'RE PREPARED, MR. FIELD --

8 MR. MARCUS: CAN I BE HEARD ONE MOMENT ON
9 WHY THAT IS APPROPRIATE?

10 THE COURT: I THINK I'VE BEEN AWFULLY
11 GENEROUS TO YOU, BUT GO AHEAD.

12 MR. MARCUS: THANK YOU, SIR.

13 THE ACTIVITY THAT WE HAVE THE RIGHT TO BE
14 WITHIN SIX FEET OF GOES ON -- IN EACH OF THOSE TABLES.
15 IT'S A VERY BIG ROOM.

16 THE COURT: YOU DON'T HAVE THE RIGHT TO
17 BE WITHIN A HUNDRED FEET.

18 MR. MARCUS: WE HAVE THE RIGHT TO BE
19 WITHIN THE SAME --

20 THE COURT: YOU HAVE A RIGHT MAYBE TO BE
21 TREATED EQUALLY AS RECOGNIZED BY A STATE COURT. I'M NOT
22 YET CONVINCED I HAVE JURISDICTION HERE.

23 IF EVERYONE IS BEING TREATED THE SAME AND
24 EVERYONE IS WITHIN SIX FEET OF THE FIRST SET OF TABLES,
25 PROBABLY MORE LIKE WHAT, 20 FEET FROM THE SECOND SET OF

1 TABLES AND 30 FEET FROM THE THIRD SET OF TABLES, DOES
2 THAT SOUND ABOUT RIGHT?

3 MR. MARCUS: YES, SIR.

4 THE COURT: IS THAT WHAT THE CITY IS
5 PREPARED TO AGREE TO? CAN SOMEBODY PLEASE --

6 MR. FIELD: I'M SORRY, YOUR HONOR. I
7 MISSED THE QUESTION.

8 THE COURT: THAT IS QUITE ALL RIGHT.

9 AS I UNDERSTAND IT, THE CITY IS PREPARED
10 TO AGREE THAT THIS -- YOU DON'T WANT TO MISS THIS BIT OF
11 ARTWORK. THAT THIS IS THE BARRICADE. THE FIRST SET OF
12 TABLES ARE SIX FEET FROM THE BARRICADE, AND THE NEXT SET
13 OF TABLES ARE MAYBE TEN FEET FROM THOSE AND THE NEXT SET
14 OF TABLES ARE MAYBE 10 OR 20 FEET FROM THOSE. AND
15 EVERYONE GETS TREATED THE SAME. NO ONE -- NONE OF THE
16 OBSERVERS CAN BE ANY CLOSER THAN THAT BARRICADE. AND IF
17 THEY'RE 20 OR 30 OR 50 FEET FROM THE NEXT SET OF TABLES
18 OR THE NEXT SET OF TABLES, THAT'S THE WAY IT IS.

19 MR. FIELD: YOUR HONOR, TO BE CLEAR ON
20 THE RECORD, I UNDERSTAND THAT THERE HAVE BEEN AT LEAST
21 15 REPUBLICAN OBSERVERS THERE TODAY. WE TREAT ALL OF
22 THE OBSERVERS THE SAME WAY. THEY ARE FREE TO GO UP TO
23 THE BARRICADE. THERE ARE A SET OF BEHAVIORAL
24 GUIDELINES, SUCH AS NO PHOTOGRAPHY EXCEPT FOR IN A
25 CERTAIN AREA THAT COULD CAUSE SOMEBODY TO BE REMOVED.

1 BUT WE TREAT EVERYBODY THE SAME WAY. THE
2 BARRICADE IS CURRENTLY SIX FEET FROM THE FIRST TABLES
3 WHERE THE ACTIVITIES ARE GOING ON, AND WE ARE PREPARED
4 TO KEEP IT THERE, PENDING RESOLUTION OF THE STATE COURT
5 MATTER.

6 THE COURT: DO YOU HAVE A NAME OF SOMEONE
7 WHO IS COMMITTING TO THIS?

8 MR. FIELD: I CAN ARRANGE FOR SETH
9 BLUESTEIN, WHO IS THE DEPUTY CITY COMMISSIONER.
10 COMMISSIONER AL SCHMIDT IS ONE OF THE PEOPLE IN CHARGE
11 OF MOST OF THE ACTIVITIES THERE.

12 THE COURT: YOU'RE REPRESENTING AS AN
13 OFFICER OF THE COURT THAT MR. BLUESTEIN IS GOING TO
14 ENSURE THAT THIS AGREEMENT IS HONORED?

15 MR. FIELD: PENDING RESOLUTION OF THE
16 PENNSYLVANIA --

17 THE COURT: UNTIL THE SUPREME COURT OR
18 SOME OTHER COURT MAKES A RULING. I'M NOT -- NOTHING YOU
19 ARE AGREEING TO HERE BINDS YOUR HANDS SO THAT YOU CAN'T
20 OBEY THE ORDERS OF A STATE COURT.

21 MR. FIELD: YES, YOUR HONOR. WE WILL
22 KEEP THE FENCE EXACTLY WHERE IT IS, WHICH IS SIX FEET
23 FROM THE FIRST SET OF TABLES.

24 THE COURT: AND THE PEOPLE WHO ARE GOING
25 TO BE ALLOWED IN ARE GOING TO BE PROVIDED TO YOU BY

1 MR. BONIN AND -- THE NAMES -- AND BY MR. MARCUS.

2 MR. FIELD: SO, YOUR HONOR, MR. MARCUS,
3 WE DISCUSSED THE DISTANCE, AND HE INDICATED THAT WAS NOT
4 ACCEPTABLE.

5 WE RETURNED TO THE COURTROOM SO WE --

6 THE COURT: I UNDERSTAND THAT.

7 MR. MARCUS IS NOT GOING TO GET EVERYTHING HE WANTS. I'M
8 GOING TO TELL MR. MARCUS, HE'S THE PLAINTIFF, HE HAS
9 BROUGHT EVERYONE HERE TO THIS DANCE. AND IF HE WANTS
10 HIS PEOPLE TO BE ALLOWED INTO THE ROOM, THEY HAVE TO
11 GIVE HIM THEIR NAMES AND HE HAS TO GIVE THEM TO
12 MS. CLAIBORNE? NO.

13 WHO? WHO DOES HE HAVE TO PROVIDE THEM
14 TO?

15 MR FIELD: TO MR. BLUESTEIN WITH NAMES
16 AND ADDRESSES, YOUR HONOR. BUT THERE IS -- WHAT I DON'T
17 KNOW IF MR. MARCUS HAS THE ABILITY TO IDENTIFY THOSE
18 NAMES AS TO CANDIDATES BECAUSE THE STATUTE IN THE
19 BOARD'S PROCEDURES WHICH REQUIRE BOARD MEETING --

20 THE COURT: YOU CAN'T IDENTIFY THEM AS
21 THE CANDIDATE, THEY WON'T BE ALLOWED IN.

22 MR. FIELD: VERY WELL, YOUR HONOR.

23 THE COURT: SAME WITH MR. BONIN. THAT'S
24 THE AGREEMENT.

25 MR. MARCUS: I HEAR THAT, YOUR HONOR.

1 WHAT ABOUT THE NUMBER OF OBSERVERS?

2 THE COURT: IT WAS 30 AND 30, I BELIEVE.

3 IS THAT --

4 MR. FIELD: SO, YOUR HONOR, IT COULD
5 EXCEED 30. IT'S ONE PER CANDIDATE PLUS THREE PER PARTY.
6 SO IF YOU CAN IDENTIFY OBSERVERS FOR DIFFERENT
7 CANDIDATES, THEN THAT'S FINE.

8 THE COURT: I JUST WANT TO HAVE HARD
9 NUMBERS.

10 YOU'VE APPEARED BEFORE ME. I NEVER SAY
11 THERE'S A TEN-DAY CONTINUANCE. I'LL SAY IT'S DUE ON A
12 PARTICULAR DATE, BECAUSE EVERYBODY COUNTS DIFFERENTLY.
13 40 PER SIDE?

14 MR. FIELD: IF THEY ARE PROPERLY
15 DESIGNATED, YOUR HONOR.

16 THE COURT: 50 PER SIDE? JUST WHAT IS
17 THE AGREEMENT?

18 MR. FIELD: YOUR HONOR, IF THEY ARE
19 PROPERLY DESIGNATED UP TO THE MAXIMUM AMOUNT THE
20 ELECTION CODE IS ALLOWED IS WHAT I CAN COMMIT TO. I
21 DON'T KNOW --

22 THE COURT: WHAT IS THAT?

23 MR. FIELD: HOW MANY -- DO YOU KNOW HOW
24 MANY REPUBLICAN CANDIDATES WERE ON THE BALLOT, MR.
25 BONIN?

1 MR. BONIN: I DO NOT KNOW, BECAUSE I KNOW
2 THAT THERE WERE MANY --

3 THE COURT: JUST PICK A NUMBER. WE'RE
4 TALKING ABOUT A DAY OR TWO. JUST PICK A NUMBER. I
5 PROPOSED 30 PER SIDE. THEN I PROPOSED 40 PER SIDE.
6 WHAT WOULD THE PARTIES LIKE? I JUST --

7 MR. BONIN: WE GENERALLY KEPT THINGS
8 BETWEEN 10 TO 15 AT ALL TIMES. AND THAT HAS BEEN
9 SUFFICIENT FOR US. WE JUST WANT WHAT -- EQUAL TO
10 WHATEVER THE REPUBLICANS WOULD LIKE TO HAVE, AS
11 MR. FIELD SAID, CONSISTENT WITH THE STATUTE.

12 THE COURT: THE WORLD HAS ITS EYES ON
13 PHILADELPHIA RIGHT NOW, AND IT WILL TAKE ITS EYES OFF
14 SOON ENOUGH. I SIMPLY WOULD LIKE THE PARTIES TO AGREE
15 THAT BOTH SIDES WILL BE SUBJECT BY THEIR OWN AGREEMENT
16 TO THE SAME LIMITATIONS. I DON'T CARE IF IT'S ONE
17 OBSERVER PER SIDE.

18 NO MORE THAN HOW MANY MR. BONIN? NO MORE
19 THAN?

20 MR. BONIN: THE PROBLEM WITH MY
21 COMMITTING TO THAT, YOUR HONOR, IS THAT EACH OF THE
22 CANDIDATES WHO IS ON THE BALLOT HAS THE RIGHT TO HAVE AN
23 OBSERVER IN THE ROOM. I CAN'T BIND ALL OF THEM MYSELF.
24 I CAN ONLY SPEAK ON BEHALF OF THE DEMOCRATIC PARTY WHICH
25 I'M REPRESENTING HERE.

1 MR. MARCUS: SAY A BIG NUMBER.

2 THE COURT: THAT WOULD SOLVE IT. 60 PER
3 SIDE? THAT CERTAINLY -- HOW MANY.

4 MR. BONIN: THAT'S --

5 THE COURT: WAIT. MR. WIYGUL, DID YOU
6 TELL ME HOW MANY CANDIDATES WERE ON THE BALLOT?
7 SOMEBODY TOLD ME.

8 MR. FIELD: I BELIEVE THERE
9 WERE 59 RACES ACROSS THE ENTIRE CITY.

10 THE COURT: 59 RACES.

11 MR. FIELD BUT THEY ARE NOT NECESSARILY
12 CANDIDATES ON ALL SIDES IN EACH RACE.

13 THE COURT: FINE. AND AS FAR AS YOU
14 KNOW, MR. BONIN, AS FAR AS YOU KNOW, DOES EVERY
15 CANDIDATE HAVE A REPRESENTATIVE UP TILL NOW? I WOULD BE
16 VERY SURPRISED IF EVERY CANDIDATE DID.

17 MR. BONIN: NO, NOT EVERY CANDIDATE
18 HAS --

19 THE COURT: HOW MANY, BALLPARK?

20 MR. BONIN: I WOULD SAY 20-SOME HAVE
21 AUTHORIZED REPRESENTATIVES, BUT WE HAVEN'T HAD MORE
22 THAN -- THERE HAVEN'T BEEN MORE THAN 10 TO 15
23 DEMOCRATIC --

24 THE COURT: FINE, FINE. THEN WE'LL DO 60
25 A SIDE. AND IF THAT IS AN INADEQUATE NUMBER, IF THAT IS

1 AN INADEQUATE NUMBER, THE PARTIES ARE FREE TO AGREE TO A
2 LARGER NUMBER WITHOUT OTHERWISE VIOLATING THE AGREEMENT
3 OR THE PARTIES MIGHT -- MY LAW CLERK IS GOING TO GIVE
4 YOU HIS CELL PHONE NUMBER. WE ARE ALWAYS OPEN. YOU CAN
5 CALL -- THE PARTIES CAN JOINTLY CALL ME, CONTACT ME
6 THROUGH MY LAW CLERK AT ANY TIME IF THIS NEEDS TO BE
7 REVISED TONIGHT, TOMORROW MORNING, I'LL BE HERE TOMORROW
8 MORNING, BUT IF THIS NEEDS TO BE REVISED, SO WE HAVE --
9 WHAT DID I SAY, 60?

10 MR. BONIN: YOU SAID 60, JUDGE.

11 THE COURT: 60, MR. MARCUS.

12 MR. MARCUS: YES, YOUR HONOR.

13 THE COURT: MR. WIYGUL?

14 MR. FIELD: SO YOUR HONOR --

15 THE COURT: MR. FIELD.

16 MR. FIELD: I CAN'T COMMIT MY CLIENT TO
17 SOMETHING OUTSIDE OF THE ELECTION CODE AND THE
18 REGULATIONS THEY HAVE PASSED, BUT I BELIEVE THAT THIS IS
19 A MATTER THAT WILL NOT -- I'M HOPEFUL WILL NOT COME BACK
20 TO THE COURT, BECAUSE WE CERTAINLY WORK WITH THE PARTIES
21 TO CREDENTIAL OBSERVERS. AND I WILL SAY --

22 THE COURT: I WOULD BE SURPRISED IF THERE
23 ARE 60 PEOPLE FOR EACH SIDE.

24 MR. FIELD: I AGREE, YOUR HONOR. AND
25 THAT'S WHY I'M SAYING THAT. AND I WOULD NOTE THAT IN

1 THIS ELECTION CYCLE, ALL OF THE OBSERVER REQUESTS THAT
2 I'M AWARE OF CAME IN FROM ONE PARTY ATTORNEY AND HAD ALL
3 OF THE CANDIDATES UNDERNEATH IT. SO I THINK IT'S THE
4 CASE THAT WE CAN REQUEST THAT THE CANDIDATES -- AND
5 THERE IS NO DISCUSSION.

6 THE COURT: IF THERE IS A PROBLEM BECAUSE
7 YOU HAVE TO HAVE FEWER PEOPLE OR YOU HAVE TO HAVE MORE
8 PEOPLE, I REALLY WISH YOU WOULD SPEAK TO EACH OTHER AND
9 AGREE TO IT AND JUST INFORM ME OF IT. IF THERE IS A
10 PROBLEM WITH THE CODE AND YOU HAVE TO HAVE FEWER PEOPLE,
11 JUST AS LONG AS IT APPLIES TO BOTH SIDES THE SAME WAY.

12 MR. FIELD: I'M WILLING TO DO THAT, YOUR
13 HONOR, AND I CAN WORK WITH MY CLIENTS.

14 THE COURT: THE PEOPLE ON THIS FIRST --
15 THIS IS GREAT DRAWING. I WOULD LIKE YOU TO HAND THIS
16 OUT TO THE MEDIA. IT SHOULD BE PRINTED.

17 EQUAL NUMBERS OF PEOPLE CAN BE ALLOWED TO
18 STAND -- FOR EACH SIDE CAN BE ALLOWED TO STAND.
19 IMAGINE -- LIKE IN CECIL B. DEMILLE'S TEN COMMANDMENTS,
20 THERE'S A -- THE SEA IS -- THE RED SEA IS PARTED.
21 HOWEVER MANY ON ONE SIDE, HOWEVER MANY ON THE OTHER.

22 DOES THAT SOUND DOABLE, MR. BONIN?

23 MR. BONIN: I THINK THAT THAT
24 MISCONCEIVES OF WHAT THE ROOM LOOKS LIKE, JUDGE. WHAT
25 YOU HAVE IS --

1 THE COURT: I THOUGHT YOU WERE GOING TO
2 TELL ME I MISREMEMBERED THE MOVIE.

3 MR. BONIN: NO, JUDGE. WE ALL -- IT'S ON
4 EASTER EVERY YEAR.

5 BASICALLY WHAT IT LOOKS LIKE IS --

6 MR. CLAIBORNE: I HAVE A PHOTO.

7 MR. BONIN: IF YOU HAVE A PHOTO, YEAH,
8 WHY DON'T YOU SHOW THE JUDGE?

9 THE COURT: THAT WOULD BE GREAT. I DON'T
10 WANT TO PART WITH THIS DRAWING, BUT --

11 MR. CLAIBORNE: (INDICATING).

12 THE COURT: WHAT AM I MISSING, MR. BONIN?
13 HERE'S THE --

14 MR. BONIN: THERE IS A CROWD CONTROL
15 BARRIER ACROSS THE FRONT AS THERE IS ON BROAD STREET FOR
16 THE MUMMERS PARADE. ALL OF THE OBSERVERS FOR ALL
17 PARTIES ARE ON THE ONE SIDE OF THE BARRICADE.

18 THE COURT: CORRECT.

19 MR. BONIN: AND ALL OF THE WORK IS DONE
20 ON THE OTHER SIDE OF THE BARRICADE.

21 THE COURT: CORRECT. I THINK YOU
22 MISUNDERSTOOD. I'M JUST SAYING THAT YOU CAN'T SAY THAT
23 IF THERE ARE 120 OBSERVERS ALLOWED AND EVERYBODY AGREES
24 THAT IS WHAT IT'S GOING TO BE, 119 OF THEM CAN'T BE ON
25 ONE SIDE STANDING AT THE FRONT THERE AND ONE ON THE

1 OTHER. WHATEVER FITS -- WHATEVER FITS SAFELY, IF IT'S
2 10 AND 10, 20 AND 20, WHATEVER IT IS, IT'S --

3 LOOK, THERE MAY NOT BE A NEED FOR THIS.
4 IT MAY BE THAT ONE SIDE HAS ONLY THREE OR FOUR PEOPLE
5 AND THE OTHER SIDE HAS TEN, I DON'T KNOW. BUT THEY ALL
6 HAVE TO -- OBVIOUSLY THEY HAVE TO STAY ON THE ONE SIDE
7 OF THE BARRIER, BUT YOU CAN'T -- EQUAL ACCESS TO BOTH
8 SIDES TO THAT FRONT BARRIER, AS LONG AS THE SOCIAL
9 DISTANCING GUIDELINES AND THE ELECTION CODE AND ALL OF
10 THAT ARE BEING COMPLIED WITH.

11 MR. BONIN: ABSOLUTELY, JUDGE.

12 THE COURT: WOULD YOU LIKE YOUR COMPUTER
13 BACK?

14 MR. CLAIBORNE: YES, SIR.

15 THE COURT: OKAY. IF I DETERMINE THAT IN
16 CARRYING THIS OUT ONE SIDE OR ANOTHER HAS NOT ACTED IN
17 GOOD FAITH, I MAY OR MAY NOT HAVE JURISDICTION TO HEAR
18 THIS DISPUTE, BUT I CERTAINLY HAVE JURISDICTION TO
19 POLICE THE CONDUCT OF COUNSEL AND PARTIES BEFORE ME IF
20 THEY HAVE MISREPRESENTED TO ME. AM I BEING CLEAR? I
21 EXPECT EVERYBODY TO ACT IN GOOD FAITH. ERR ON THE SIDE
22 OF CAUTION. DON'T HESITATE TO CONTACT MY LAW CLERK.
23 AND IF WE CAN SHOW THE WORLD THAT BOTH SIDES CAN ACT
24 REASONABLY TO RESOLVE THIS, THAT WOULD BE WONDERFUL.

25 MR. KIM IS HERE, HE IS IN CHARGE OF

1 SECURITY. I HAVE ASKED HIM, AND HE HAS GRACIOUSLY
2 AGREED, IF ANY OF COUNSEL ARE CONCERNED ABOUT THEIR
3 PHYSICAL SAFETY LEAVING THE BUILDING, BECAUSE I
4 UNDERSTAND, AS I SAID, MORE HEAT THAN LIGHT HAS BEEN
5 GENERATED, HE WILL HAVE MARSHALS ESCORT YOU.

6 IS THERE ANYTHING MORE WE NEED TO DEAL
7 WITH?

8 MR. MARCUS: ONE BRIEF THING, YOUR HONOR.

9 THE COURT: YES.

10 MR. MARCUS: WHICH I DON'T THINK WILL BE
11 CONTROVERSIAL. BUT WE JUST WANT TO MAKE CLEAR THAT JUST
12 AS THE DEFENDANT INTEND TO CONTINUE LITIGATING IN THE
13 STATE SUPREME COURT, SO DO WE, AND THAT OUR AGREEMENT
14 HERE IS NOT --

15 THE COURT: ABSOLUTELY NOT.

16 MR. MARCUS: -- NOT PREJUDICED --

17 THE COURT: YOU CAN LITIGATE.

18 THIS -- I'M GOING TO DENY YOUR MOTION
19 WITHOUT PREJUDICE AS MOOT IN LIGHT OF THE AGREEMENT THAT
20 HAS BEEN REACHED BETWEEN THE PARTIES. IT'S WITHOUT
21 PREJUDICE.

22 MR. MARCUS: THANK YOU, YOUR HONOR.

23 THE COURT: MY GUESS IS LONG BEFORE THE
24 CITY HAS TO ANSWER WHAT IS NOT A TERRIBLY LONG
25 COMPLAINT, AS WE'VE INDICATED, THE LAWSUIT WILL LIKELY

1 IF NOT BE WITHDRAWN, THE COMPLAINT WILL BE REPLACED WITH
2 AN AMENDED COMPLAINT. SO I'M NOT GOING TO ISSUE A CASE
3 MANAGEMENT ORDER, WHICH AS YOU KNOW I'M FOND OF DOING,
4 AND WITH VERY, VERY FAST DATES. I DON'T THINK THAT IS
5 GOING TO BE NECESSARY HERE.

6 IS THERE IS ANYTHING MORE WE NEED TO
7 DISCUSS?

8 MR. MARCUS: NOTHING FROM THE PLAINTIFF.

9 THE COURT: I URGE YOU, IF THERE IS A
10 PROBLEM, DON'T BE SHY, CONTACT MY LAW CLERK AND HE WILL
11 CONTACT ME. I DON'T UNDERSTAND ENTIRELY WHY THIS
12 COULDN'T HAVE BEEN AGREED TO ABSENT JUDICIAL
13 INTERVENTION, EXCEPT FOR THE FACT THAT IT'S A VERY
14 HEAVILY CONTESTED MATTER.

15 AND THE THREE LAWYERS FOR THE DEFENDANTS
16 ARE WHISPERING TO EACH OTHER. YES, IS THERE ANYTHING
17 YOU WISH TO TELL ME?

18 MR. FIELD: YOUR HONOR, I SHUDDER TO
19 BRING THIS UP, TO BE HONEST, BUT I WANT TO MAKE SURE
20 BECAUSE WE ARE GOING TO DO EVERYTHING WE CAN TO
21 NEGOTIATE IN GOOD FAITH --

22 THE COURT: NO, NO. YOU'VE ALREADY
23 NEGOTIATED IN GOOD FAITH. YOU'RE GOING TO TRY TO ACT IN
24 GOOD FAITH TO IMPLEMENT WHAT IT IS THAT YOU AGREED TO.
25 AND I HAVE NO DOUBT THAT YOU WILL, MR. FIELD. I DIDN'T

1 MEAN TO IMPLY THAT YOU WEREN'T.

2 MR. FIELD: UNDERSTOOD. BUT I HAVE BEEN
3 TRANSPARENT WITH THE COURT THAT THERE ARE SOME
4 REQUIREMENTS IN THE ELECTION CODES --

5 THE COURT: IF THERE IS A PROBLEM WITH
6 THE ELECTION CODE AND YOU CAN'T DO SOMETHING, YOU TELL
7 THAT TO MR. MARCUS. AND IF HE CAN'T -- IF HE DISAGREES
8 WITH THAT, CALL MY CLERK. THAT IS NOT BAD FAITH.
9 COMPLYING WITH THE LAW IS NOT BAD FAITH.

10 MR. FIELD: VERY WELL, YOUR HONOR.

11 THE COURT: OKAY? ANYTHING ELSE?

12 MR. MARCUS: THANK YOU, YOUR HONOR.

13 THE COURT: ALL RIGHT. MY THANKS TO ALL
14 OF YOU. PLEASE STAY HEALTHY. AND, OF COURSE, MY THANKS
15 TO OUR MARSHALS.

16 ALL COUNSEL: THANK YOU, JUDGE.

17 (PROCEEDINGS ADJOURNED.)

18 I CERTIFY THAT THE FOREGOING IS A CORRECT
19 TRANSCRIPT FROM THE RECORD OF PROCEEDINGS IN THE
20 ABOVE-ENTITLED MATTER.

21

22 11-5-20

Suzanne White

23 DATE

SUZANNE R. WHITE

24

OFFICIAL COURT REPORTER

25

1	53 [1] - 22:6 57 [1] - 19:22 59 [3] - 19:23, 36:9, 36:10 5:30 [1] - 1:9	ACTUALLY [5] - 5:17, 10:25, 11:15, 11:17, 11:18 ADAM [2] - 2:10, 20:5 ADD [1] - 5:25 ADDITIONAL [1] - 23:5 ADDRESS [2] - 6:18, 16:12 ADDRESSED [1] - 13:16 ADDRESSES [2] - 22:14, 33:16 ADEQUATE [1] - 5:3 ADJOURNED [1] - 43:17 ADMITTED [1] - 5:2 ADULTS [1] - 13:11 AFTERNOON [1] - 6:13 AGAIN [4] - 3:17, 3:23, 9:4, 12:21 AGO [1] - 25:8 AGREE [11] - 13:7, 24:2, 24:7, 26:3, 27:14, 31:5, 31:10, 35:14, 37:1, 37:24, 38:9 AGREED [4] - 25:5, 41:2, 42:12, 42:24 AGREEING [4] - 13:20, 25:12, 25:18, 32:19 AGREEMENT [10] - 13:12, 14:13, 24:21, 32:14, 33:24, 34:17, 35:15, 37:2, 41:13, 41:19 AGREES [1] - 39:23 AHEAD [2] - 22:5, 30:11 AIDED [1] - 1:25 AIRCRAFT [1] - 12:2 AL [1] - 32:10 ALACRITY [1] - 25:10 ALL [36] - 4:3, 4:18, 7:17, 9:18, 11:14, 13:12, 13:13, 14:1, 14:20, 16:3, 22:16, 23:22, 26:10, 27:16, 27:25, 28:1, 28:2, 28:8, 28:14, 29:5, 31:8, 31:21, 35:8, 35:23, 36:12, 38:1, 38:2, 39:3, 39:16, 39:19, 40:5, 40:9, 43:13, 43:16 ALLOW [2] - 13:21, 17:18 ALLOWANCE [1] - 6:5	ALLOWED [16] - 7:15, 9:15, 9:22, 10:3, 10:4, 12:8, 13:13, 13:25, 19:5, 32:25, 33:10, 33:21, 34:20, 38:17, 38:18, 39:23 ALMOST [1] - 19:16 ALREADY [4] - 13:16, 14:9, 15:18, 42:22 ALSO [2] - 3:12, 5:25 ALTERS [1] - 25:2 ALTHOUGH [3] - 17:8, 17:14, 19:16 ALWAYS [1] - 37:4 AM [2] - 39:12, 40:20 AMENDED [1] - 42:2 AMENDMENT [1] - 7:25 AMOUNT [2] - 17:1, 34:19 AN [28] - 4:5, 4:12, 4:20, 5:19, 5:21, 5:22, 6:2, 6:8, 9:9, 9:17, 11:23, 12:4, 12:6, 13:11, 14:9, 14:12, 16:11, 22:7, 23:11, 23:19, 24:1, 24:21, 25:4, 32:12, 35:22, 36:25, 37:1, 42:2 AND [155] - 2:3, 3:6, 3:12, 3:19, 4:7, 4:9, 4:10, 4:14, 4:16, 4:20, 4:22, 4:25, 5:3, 5:12, 5:13, 5:14, 5:16, 5:24, 6:7, 6:12, 6:18, 6:20, 7:14, 7:17, 7:24, 8:6, 8:17, 8:23, 9:7, 9:22, 10:23, 11:16, 12:1, 12:4, 13:8, 13:9, 13:11, 13:16, 13:21, 13:23, 13:24, 14:1, 14:4, 14:23, 15:6, 15:12, 15:20, 16:3, 16:9, 16:15, 16:24, 16:25, 17:1, 17:5, 18:1, 18:2, 18:5, 18:6, 18:14, 19:6, 19:13, 20:9, 21:10, 22:13, 22:14, 22:16, 22:17, 22:19, 22:20, 23:4, 23:5, 23:12, 23:16, 24:4, 24:7, 24:13, 24:16, 24:21, 24:24, 25:6, 25:14, 25:15, 25:20, 26:3, 26:8, 26:9, 26:10, 26:12, 26:13, 26:15, 26:20, 27:8, 27:11,	27:13, 27:19, 27:25, 28:2, 28:3, 28:16, 28:17, 29:25, 30:3, 30:5, 30:23, 31:1, 31:12, 31:13, 31:14, 31:16, 32:3, 32:24, 33:1, 33:3, 33:9, 33:11, 33:16, 34:2, 35:8, 35:13, 36:13, 36:25, 37:17, 37:21, 37:24, 37:25, 38:2, 38:4, 38:8, 38:9, 38:10, 38:13, 39:19, 39:23, 39:25, 40:2, 40:5, 40:9, 40:19, 40:23, 41:1, 41:13, 42:4, 42:10, 42:15, 42:25, 43:6, 43:7, 43:14 ANOTHER [3] - 17:10, 17:11, 40:16 ANSWER [3] - 21:13, 23:19, 41:24 ANY [6] - 9:13, 19:13, 27:21, 31:16, 37:6, 41:2 ANYBODY [2] - 17:7, 19:5 ANYONE [2] - 15:9, 27:22 ANYONE'S [1] - 28:1 ANYTHING [8] - 14:12, 24:8, 25:17, 25:18, 41:6, 42:6, 42:16, 43:11 APART [1] - 15:11 APPEAL [2] - 6:5, 16:11 APPEARANCES [2] - 1:14, 2:1 APPEARED [1] - 34:10 APPEARS [1] - 16:11 APPLIES [1] - 38:11 APPOINT [3] - 19:3, 19:9, 19:11 APPROPRIATE [5] - 4:23, 4:25, 5:24, 23:2, 30:9 ARCH [1] - 2:8 ARE [72] - 3:20, 5:21, 6:16, 7:12, 7:14, 7:21, 7:24, 9:14, 10:4, 10:8, 10:9, 10:10, 10:13, 10:15, 10:16, 11:2, 11:13, 13:9, 13:13, 13:15, 13:17, 13:19, 13:25, 15:3, 15:25, 16:1, 16:2, 17:4, 17:5,			
10 [7] - 24:4, 31:14, 35:8, 36:22, 40:2 100 [2] - 11:16, 13:25 11-5-20 [1] - 43:22 119 [1] - 39:24 120 [1] - 39:23 121 [1] - 2:11 14TH [1] - 7:24 15 [3] - 31:21, 35:8, 36:22 150 [1] - 7:13 1515 [1] - 2:8 15B [1] - 3:11 19066 [1] - 1:16 19102 [1] - 2:8 19103 [1] - 2:4 19106 [2] - 1:10, 1:22 19107 [1] - 2:12 1983 [1] - 7:24	6 60 [6] - 36:2, 36:24, 37:9, 37:10, 37:11, 37:23 601 [1] - 1:21 67-YEAR [1] - 12:3	9 9:30 [1] - 4:7	A ABILITY [1] - 33:17 ABOUT [12] - 4:2, 10:24, 16:17, 20:9, 20:18, 21:9, 23:16, 25:17, 31:2, 34:1, 35:4, 41:2 ABOVE [3] - 20:25, 21:3, 43:20 ABOVE-ENTITLED [1] - 43:20 ABSENT [1] - 42:12 ABSENTEE [2] - 4:9, 4:16 ABSOLUTELY [3] - 7:16, 40:11, 41:15 ABSTAIN [1] - 16:10 ABSTRACT [1] - 6:25 ACCEPTABLE [2] - 28:18, 33:4 ACCESS [12] - 4:8, 4:15, 5:3, 8:22, 8:24, 10:11, 10:13, 11:9, 11:10, 27:18, 27:21, 40:7 ACCOMMODATE [1] - 18:24 ACCURATE [1] - 11:11 ACROSS [2] - 36:9, 39:15 ACT [6] - 25:8, 25:11, 40:21, 40:23, 42:23 ACTED [1] - 40:16 ACTING [4] - 22:24, 22:25, 25:9 ACTION [1] - 1:3 ACTIVITIES [3] - 9:18, 32:3, 32:11 ACTIVITY [1] - 30:13 ACTUAL [1] - 7:6	2 20 [6] - 16:8, 30:25, 31:14, 31:17, 40:2 20-5533 [1] - 1:7 20-SOME [1] - 36:20 2020 [1] - 1:9 212 [1] - 1:16 215)299-7252 [1] - 1:22 25 [1] - 18:23 2609 [1] - 1:21 27TH [1] - 2:3 28TH [1] - 22:12	3 30 [20] - 11:16, 11:22, 11:23, 13:25, 21:9, 21:19, 21:21, 23:3, 23:4, 23:5, 24:4, 26:18, 26:22, 31:1, 31:17, 34:2, 34:5, 35:5	4 40 [7] - 21:9, 21:22, 21:23, 25:8, 25:10, 34:13, 35:5 400 [1] - 2:11	5 5 [1] - 1:9 50 [5] - 21:25, 22:3, 31:17, 34:16 52 [2] - 22:4, 22:6

<p>18:21, 19:1, 19:4, 19:5, 19:15, 19:18, 19:20, 20:12, 21:6, 22:10, 22:15, 23:16, 25:21, 26:16, 26:20, 27:2, 29:10, 29:12, 29:24, 31:12, 31:13, 31:14, 31:22, 31:23, 32:3, 32:19, 32:24, 32:25, 34:14, 34:18, 36:11, 37:1, 37:4, 37:23, 39:17, 39:23, 40:10, 41:2, 42:16, 42:20, 43:3</p> <p>AREA^[5] - 15:22, 15:25, 21:9, 31:25</p> <p>AREN'T^[1] - 10:2</p> <p>ARGUE^[1] - 24:13</p> <p>ARONCHICK^[1] - 2:2</p> <p>AROUND^[4] - 4:7, 6:13, 16:3, 23:12</p> <p>ARRANGE^[2] - 15:20, 32:8</p> <p>ARRIVE^[1] - 18:9</p> <p>ARTWORK^[3] - 28:24, 28:25, 31:11</p> <p>AS^[62] - 3:8, 4:21, 5:9, 5:10, 5:20, 6:3, 6:8, 6:10, 7:7, 9:7, 11:1, 11:11, 13:12, 15:12, 16:8, 16:18, 18:16, 19:19, 20:15, 20:22, 20:23, 21:6, 21:12, 21:19, 23:9, 24:16, 25:20, 27:24, 28:23, 29:1, 29:11, 30:21, 31:9, 31:24, 32:12, 33:18, 33:20, 35:10, 36:13, 36:14, 38:11, 39:15, 40:8, 41:4, 41:12, 41:19, 41:25, 42:3</p> <p>ASK^[4] - 8:17, 17:19, 17:24, 28:3</p> <p>ASKED^[1] - 41:1</p> <p>ASKING^[6] - 7:21, 11:1, 14:24, 15:1, 22:8, 22:9</p> <p>ASSUME^[1] - 15:5</p> <p>AT^[34] - 1:9, 4:6, 4:16, 7:10, 8:7, 8:10, 9:10, 9:16, 9:22, 10:6, 11:14, 12:4, 14:1, 14:8, 15:11, 15:23, 16:13, 16:16, 19:3, 19:13, 19:17, 20:9, 22:7, 23:22, 24:4, 24:15, 25:6, 25:9, 25:12, 26:11, 31:20, 35:8, 37:6, 39:25</p>	<p>ATTORNEY^[1] - 38:2</p> <p>AUTHORITY^[3] - 14:4, 14:6, 15:2</p> <p>AUTHORIZATIONS^[1] - 27:1</p> <p>AUTHORIZED^[1] - 36:21</p> <p>AUTOMATIC^[1] - 6:8</p> <p>AVOID^[5] - 14:11, 26:2, 26:13, 27:9, 27:24</p> <p>AWARE^[1] - 38:2</p> <p>AWAY^[4] - 11:13, 13:25, 14:1, 25:20</p> <p>AWFULLY^[2] - 25:17, 30:10</p> <p>AWKWARD^[1] - 14:20</p>	<p>30:8, 30:13, 30:17, 30:18, 30:20, 31:16, 31:19, 31:25, 32:25, 33:10, 33:21, 35:15, 36:15, 37:6, 37:7, 37:8, 37:22, 38:16, 38:17, 38:18, 39:9, 39:24, 40:3, 40:4, 40:24, 41:10, 42:1, 42:5, 42:10, 42:19</p> <p>BEAR^[1] - 26:10</p> <p>BECAME^[1] - 5:1</p> <p>BECAUSE^[20] - 3:8, 9:11, 12:24, 15:5, 15:10, 16:11, 16:14, 18:4, 22:15, 22:22, 22:23, 23:20, 29:24, 33:18, 34:12, 35:1, 37:20, 38:6, 41:3, 42:20</p> <p>BECOME^[1] - 22:7</p> <p>BEEN^[20] - 4:17, 4:24, 6:20, 6:22, 13:16, 14:1, 15:5, 15:24, 16:7, 21:8, 27:1, 30:10, 31:20, 35:8, 36:22, 41:4, 41:20, 42:12, 43:2</p> <p>BEFORE^[10] - 1:11, 6:11, 24:15, 24:21, 24:24, 25:1, 25:3, 34:10, 40:19, 41:23</p> <p>BEGINNING^[1] - 15:23</p> <p>BEHALF^[3] - 3:13, 20:11, 35:24</p> <p>BEHAVING^[1] - 9:11</p> <p>BEHAVIOR^[2] - 22:24, 23:2</p> <p>BEHAVIORAL^[1] - 31:23</p> <p>BEHIND^[1] - 29:23</p> <p>BEING^[23] - 4:9, 4:17, 6:16, 7:14, 7:25, 8:18, 8:22, 10:10, 10:17, 11:8, 11:9, 11:23, 15:18, 16:1, 18:7, 21:12, 23:9, 23:25, 27:12, 27:13, 30:23, 40:10, 40:20</p> <p>BEINGS^[1] - 18:3</p> <p>BELIEVE^[12] - 5:9, 5:14, 5:15, 6:1, 6:12, 6:22, 9:10, 12:2, 21:20, 34:2, 36:8, 37:18</p> <p>BELOW^[1] - 29:9</p> <p>BENJAMIN^[1] - 2:7</p> <p>BEST^[2] - 9:5, 9:6</p> <p>BETTER^[2] - 8:24,</p>	<p>18:19</p> <p>BETWEEN^[4] - 11:16, 26:13, 35:8, 41:20</p> <p>BIG^[4] - 6:25, 7:7, 30:15, 36:1</p> <p>BIGGER^[1] - 7:11</p> <p>BIND^[2] - 23:17, 35:23</p> <p>BINDS^[1] - 32:19</p> <p>BIT^[2] - 15:17, 31:10</p> <p>BLOCK^[1] - 20:7</p> <p>BLUESTEIN^[3] - 32:9, 32:13, 33:15</p> <p>BOARD^[10] - 1:6, 3:20, 6:4, 14:17, 14:22, 14:23, 22:11, 27:11, 33:19</p> <p>BOARD'S^[1] - 33:19</p> <p>BONIN^[30] - 2:10, 20:4, 20:5, 20:7, 20:8, 20:19, 26:23, 26:24, 26:25, 27:16, 33:1, 33:23, 34:25, 35:1, 35:7, 35:18, 35:20, 36:4, 36:14, 36:17, 36:20, 37:10, 38:22, 38:23, 39:3, 39:7, 39:12, 39:14, 39:19, 40:11</p> <p>BOOK^[1] - 12:12</p> <p>BOTH^[9] - 5:14, 5:16, 8:2, 8:7, 8:9, 35:15, 38:11, 40:7, 40:23</p> <p>BOTHERED^[1] - 27:19</p> <p>BRIEF^[2] - 16:24, 41:8</p> <p>BRIEFING^[2] - 6:12</p> <p>BRIEFS^[1] - 25:14</p> <p>BRING^[2] - 16:21, 42:19</p> <p>BROAD^[2] - 2:11, 39:15</p> <p>BROKERING^[1] - 14:14</p> <p>BROUGHT^[2] - 5:6, 33:9</p> <p>BUILDING^[2] - 2:7, 41:3</p> <p>BULGE^[1] - 26:11</p> <p>BUSH^[2] - 8:8, 8:10</p> <p>BUT^[37] - 3:6, 6:19, 10:6, 12:3, 12:10, 12:17, 13:4, 13:16, 14:6, 14:10, 15:22, 16:21, 17:16, 18:21, 20:6, 21:24, 23:2, 23:23, 24:14, 24:25, 25:10, 25:24, 27:6, 30:11, 32:1, 33:16,</p>	<p>36:11, 36:21, 37:8, 37:18, 39:10, 40:5, 40:7, 40:18, 41:11, 42:19, 43:2</p> <p>BY^[18] - 1:24, 1:25, 4:5, 4:12, 5:19, 6:3, 14:12, 21:12, 23:21, 24:2, 25:18, 26:15, 27:13, 27:20, 30:21, 32:25, 33:1, 35:15</p> <p>BYRNE^[1] - 1:8</p>
C				
<p>CALL^[5] - 3:12, 25:14, 37:5, 43:8</p> <p>CALL-IN^[1] - 3:12</p> <p>CAME^[1] - 38:2</p> <p>CAMPAIGN^[8] - 4:15, 4:20, 8:3, 8:12, 8:18, 27:10, 27:11</p> <p>CAN^[61] - 3:17, 4:20, 6:18, 6:24, 11:20, 12:1, 13:8, 13:11, 15:11, 15:13, 15:15, 15:16, 15:20, 16:18, 16:21, 17:3, 17:22, 17:23, 18:13, 18:24, 19:2, 19:3, 19:5, 19:9, 19:11, 19:19, 20:9, 21:5, 21:19, 21:24, 22:1, 22:4, 23:3, 23:4, 23:10, 23:11, 23:20, 24:2, 24:4, 24:7, 27:11, 27:23, 28:4, 30:8, 31:5, 31:16, 32:8, 34:6, 34:20, 35:24, 37:4, 37:5, 38:4, 38:13, 38:17, 38:18, 40:23, 41:17, 42:20</p> <p>CAN'T^[15] - 7:20, 11:12, 11:22, 15:19, 18:8, 27:14, 32:19, 33:20, 35:23, 37:16, 39:22, 39:24, 40:7, 43:6, 43:7</p> <p>CANDIDATE^[8] - 19:13, 19:14, 27:4, 33:21, 34:5, 36:15, 36:16, 36:17</p> <p>CANDIDATES^[15] - 19:16, 19:17, 19:18, 19:21, 26:16, 26:21, 27:2, 33:18, 34:7, 34:24, 35:22, 36:6, 36:12, 38:3, 38:4</p> <p>CANVASS^[1] - 15:23</p> <p>CANVASSING^[1] - 9:18</p>				

CARE ^[1] - 35:16 CARRYING ^[1] - 40:16 CASE ^[3] - 8:13, 38:4, 42:2 CAUSE ^[1] - 31:25 CAUTION ^[1] - 40:22 CECIL ^[1] - 38:19 CELL ^[1] - 37:4 CENTER ^[1] - 4:16 CERTAIN ^[2] - 10:3, 31:25 CERTAINLY ^[7] - 13:19, 14:10, 21:16, 23:20, 36:3, 37:20, 40:18 CERTIFY ^[1] - 43:18 CHALLENGE ^[1] - 28:1 CHANGE ^[1] - 25:11 CHARACTERIZATION ^[1] - 6:1 CHARGE ^[2] - 32:10, 40:25 CHECKING ^[1] - 11:21 CITY ^[11] - 7:2, 14:5, 17:9, 17:16, 19:22, 27:12, 31:4, 31:9, 32:9, 36:9, 41:24 CIVIL ^[1] - 1:3 CLAIBORNE ^[29] - 2:6, 3:19, 7:1, 7:4, 7:9, 7:13, 7:16, 9:3, 9:4, 9:8, 9:16, 12:21, 13:3, 13:4, 13:15, 13:19, 14:8, 15:14, 20:24, 21:1, 22:24, 24:9, 24:10, 24:20, 33:12, 39:6, 39:11, 40:14 CLAUSE ^[2] - 8:6, 8:7 CLEAR ^[6] - 5:1, 25:17, 26:25, 31:19, 40:20, 41:11 CLERK ^[7] - 3:1, 28:8, 37:3, 37:6, 40:22, 42:10, 43:8 CLERKED ^[1] - 25:8 CLIENT ^[16] - 4:7, 4:8, 4:15, 11:11, 14:15, 16:5, 18:14, 22:20, 22:21, 23:6, 23:17, 23:24, 24:2, 24:6, 29:1, 37:16 CLIENT'S ^[1] - 28:25 CLIENTS ^[3] - 13:13, 18:13, 38:13 CLOSE ^[2] - 9:14, 15:12 CLOSER ^[4] - 12:13, 16:17, 17:18, 31:16	CLOSEST ^[1] - 9:19 CM ^[1] - 1:20 CO ^[2] - 24:12, 26:7 CO-COUNSEL ^[2] - 24:12, 26:7 CODE ^[8] - 19:8, 19:9, 23:17, 34:20, 37:17, 38:10, 40:9, 43:6 CODES ^[1] - 43:4 COFFEE ^[1] - 23:12 COLLEAGUE ^[1] - 6:18 COME ^[6] - 15:22, 18:18, 24:21, 37:19 COMES ^[2] - 26:17, 26:22 COMFORTABLE ^[3] - 3:5, 3:7, 3:18 COMING ^[1] - 25:25 COMMANDMENTS ^[1] - 38:19 COMMENCING ^[1] - 1:9 COMMISSIONER ^[2] - 32:9, 32:10 COMMISSIONERS ^[1] - 15:21 COMMIT ^[2] - 34:20, 37:16 COMMITTING ^[2] - 32:7, 35:21 COMMONWEALTH ^[6] - 4:6, 4:13, 6:3, 6:9, 6:21, 14:9 COMPANY ^[1] - 25:23 COMPLAINT ^[6] - 5:10, 5:14, 16:16, 41:25, 42:1, 42:2 COMPLETED ^[2] - 6:13, 13:1 COMPLETELY ^[1] - 10:1 COMPLIANCE ^[1] - 13:17 COMPLIED ^[2] - 27:14, 40:10 COMPLYING ^[2] - 6:22, 43:9 COMPORTING ^[1] - 9:10 COMPUTER ^[3] - 1:24, 1:25, 40:12 COMPUTER-AIDED ^[1] - 1:25 CONCERNED ^[1] - 41:2 CONDUCT ^[1] - 40:19 CONFIRM ^[1] - 7:18 CONSIDERED ^[2] - 15:7, 22:23	CONSISTENT ^[1] - 35:11 CONSTITUTION ^[1] - 8:5 CONSTITUTIONAL ^[3] - 7:25, 10:5, 16:18 CONTACT ^[4] - 37:5, 40:22, 42:10, 42:11 CONTENTION ^[1] - 5:21 CONTESTED ^[1] - 42:14 CONTESTS ^[1] - 19:22 CONTINUANCE ^[1] - 34:11 CONTINUE ^[3] - 13:21, 27:18, 41:12 CONTINUED ^[1] - 2:1 CONTROL ^[1] - 39:14 CONTROVERSIAL ^[1] - 41:11 CONVENTION ^[1] - 4:16 CONVINCED ^[1] - 30:22 CORDONS ^[1] - 15:24 CORRECT ^[9] - 11:25, 12:25, 13:5, 29:8, 30:2, 30:5, 39:18, 39:21, 43:18 COULD ^[10] - 3:7, 11:15, 11:17, 12:3, 12:5, 17:13, 20:3, 26:2, 31:25, 34:4 COULDN'T ^[2] - 13:7, 42:12 COUNSEL ^[10] - 1:18, 2:5, 2:9, 2:13, 20:1, 24:12, 26:7, 40:19, 41:2, 43:16 COUNT ^[2] - 13:1, 29:25 COUNTED ^[1] - 4:17 COUNTERS ^[1] - 9:15 COUNTING ^[8] - 4:8, 5:4, 7:12, 7:15, 8:22, 25:22, 25:24 COUNTS ^[1] - 34:12 COUNTY ^[1] - 1:6 COURSE ^[2] - 26:23, 43:14 COURT ^[182] - 1:1, 1:20, 3:1, 3:2, 3:16, 3:23, 4:6, 4:10, 4:13, 4:21, 5:7, 5:11, 5:23, 5:25, 6:2, 6:3, 6:6, 6:9, 6:11, 6:14, 6:22, 6:24, 7:3, 7:7, 7:11, 7:14, 7:19, 7:20, 7:21, 7:22, 7:23, 8:4,	8:9, 8:15, 8:20, 8:24, 9:3, 9:6, 9:14, 9:23, 10:13, 10:18, 10:22, 11:1, 11:2, 11:6, 11:13, 11:17, 11:22, 12:1, 12:7, 12:13, 12:17, 13:7, 13:18, 14:3, 14:9, 14:11, 15:1, 15:18, 16:4, 16:11, 16:23, 17:14, 17:22, 18:1, 18:12, 18:18, 18:24, 19:4, 19:10, 19:15, 19:24, 20:3, 20:6, 20:13, 20:17, 20:21, 21:2, 21:5, 21:11, 21:15, 21:18, 21:22, 21:25, 22:3, 22:5, 22:8, 22:16, 23:21, 23:25, 24:15, 24:18, 24:23, 24:24, 25:1, 25:2, 25:3, 25:5, 25:7, 25:13, 26:9, 26:20, 26:24, 27:5, 27:23, 28:2, 28:9, 28:10, 28:14, 28:16, 28:19, 28:22, 28:24, 29:2, 29:6, 29:9, 29:13, 29:16, 29:19, 29:21, 29:24, 30:3, 30:6, 30:7, 30:10, 30:16, 30:20, 30:21, 31:4, 31:8, 32:4, 32:6, 32:12, 32:13, 32:17, 32:18, 32:20, 32:24, 33:6, 33:20, 33:23, 34:2, 34:8, 34:16, 34:22, 35:3, 35:12, 36:2, 36:5, 36:10, 36:13, 36:19, 36:24, 37:11, 37:13, 37:15, 37:20, 37:22, 38:6, 38:14, 39:1, 39:9, 39:12, 39:18, 39:21, 40:12, 40:15, 41:9, 41:13, 41:15, 41:17, 41:23, 42:9, 42:22, 43:3, 43:5, 43:11, 43:13, 43:24 COURTHOUSE ^[2] - 1:8, 1:21 COURTROOM ^[3] - 7:8, 7:10, 33:5 CREDENTIAL ^[1] - 37:21 CREDENTIALLED ^[1] - 22:14 CRIMINAL ^[1] - 22:22 CROWD ^[1] - 39:14 CURRENTLY ^[1] -	32:2 CYCLE ^[1] - 38:1 D DANCE ^[1] - 33:9 DATE ^[2] - 34:12, 43:23 DATES ^[1] - 42:4 DAY ^[8] - 4:18, 7:17, 14:2, 21:10, 26:12, 29:3, 34:11, 35:4 DAYS ^[3] - 23:1, 25:9, 27:7 DEAL ^[2] - 25:16, 41:6 DECIDE ^[2] - 16:25, 23:8 DECIDED ^[2] - 12:23, 23:7 DECISION ^[4] - 10:1, 15:2, 17:3, 17:17 DECISION-MAKER ^[1] - 17:17 DECISION-MAKING ^[1] - 15:2 DEFENDANT ^[6] - 2:5, 2:9, 2:13, 28:19, 29:22, 41:12 DEFENDANTS ^[2] - 28:17, 42:15 DEMILLE'S ^[1] - 38:19 DEMOCRATIC ^[10] - 9:2, 19:25, 20:1, 20:11, 26:20, 27:2, 27:12, 27:20, 35:24, 36:23 DENIED ^[1] - 8:18 DENY ^[1] - 41:18 DEPTH ^[1] - 18:1 DEPUTIES ^[1] - 15:21 DEPUTY ^[1] - 32:9 DESIGNATE ^[1] - 23:20 DESIGNATED ^[2] - 34:15, 34:19 DETAILS ^[1] - 6:18 DETERMINE ^[1] - 40:15 DIAMOND ^[1] - 1:11 DID ^[3] - 36:5, 36:16, 37:9 DIDN'T ^[2] - 18:9, 42:25 DIFFERENT ^[2] - 18:2, 34:6 DIFFERENTLY ^[1] - 34:12 DIMENSION ^[2] - 17:25, 18:2 DIMENSIONS ^[1] - 7:6
---	---	--	--	---

<p>DISAGREEMENT [1] - 10:24</p> <p>DISAGREES [1] - 43:7</p> <p>DISCRIMINATION [1] - 10:7</p> <p>DISCUSS [1] - 42:7</p> <p>DISCUSSED [2] - 15:24, 33:3</p> <p>DISCUSSION [1] - 38:5</p> <p>DISCUSSIONS [1] - 27:17</p> <p>DISOBEYED [1] - 4:18</p> <p>DISPUTE [6] - 24:24, 25:1, 25:5, 27:9, 27:10, 40:18</p> <p>DISTANCE [11] - 11:15, 11:16, 15:7, 16:25, 17:8, 17:10, 17:11, 23:6, 23:7, 24:5, 33:3</p> <p>DISTANCING [3] - 9:13, 22:7, 40:9</p> <p>DISTANT [1] - 15:10</p> <p>DISTRICT [3] - 1:1, 1:2, 5:23</p> <p>DO [38] - 4:2, 7:17, 12:7, 12:14, 13:5, 13:15, 14:12, 14:19, 14:22, 15:13, 15:15, 15:19, 16:5, 16:6, 16:7, 16:8, 16:23, 17:6, 17:22, 17:23, 18:19, 20:19, 21:1, 21:11, 22:3, 23:15, 24:7, 27:19, 28:6, 32:6, 34:23, 35:1, 36:24, 38:12, 41:13, 42:20, 43:6</p> <p>DOABLE [1] - 38:22</p> <p>DOCUMENT [1] - 5:10</p> <p>DOES [12] - 12:24, 13:3, 14:7, 17:9, 17:14, 23:13, 24:13, 27:6, 31:1, 33:13, 36:14, 38:22</p> <p>DOESN'T [4] - 13:24, 23:18, 27:12, 29:1</p> <p>DOING [6] - 3:5, 3:7, 3:8, 7:12, 27:1, 42:3</p> <p>DON'T [45] - 3:5, 3:16, 5:17, 10:2, 10:19, 12:1, 12:19, 12:22, 14:4, 14:5, 14:6, 15:19, 16:9, 16:12, 17:7, 18:12, 18:20, 18:21, 20:17, 20:22, 21:3, 21:4, 22:6, 22:10, 22:23, 25:7, 25:8, 25:23, 27:5,</p>	<p>27:14, 28:1, 29:2, 30:16, 31:10, 33:16, 34:21, 35:16, 39:8, 39:9, 40:5, 40:22, 41:10, 42:4, 42:10, 42:11</p> <p>DONALD [2] - 1:3, 11:3</p> <p>DONE [2] - 15:18, 39:19</p> <p>DOOR [1] - 28:5</p> <p>DOUBT [1] - 42:25</p> <p>DOWN [5] - 3:8, 9:18, 10:9, 10:10, 29:5</p> <p>DOZENS [1] - 18:10</p> <p>DRAWING [2] - 38:15, 39:10</p> <p>DUE [4] - 7:24, 8:6, 8:17, 34:11</p> <p>DURING [2] - 6:9, 21:9</p>	<p>ENTIRE [1] - 36:9</p> <p>ENTIRELY [2] - 20:8, 42:11</p> <p>ENTITLED [1] - 43:20</p> <p>ENVELOPE [3] - 11:23, 12:4, 12:6</p> <p>EQUAL [12] - 8:7, 8:16, 8:18, 8:22, 10:11, 10:13, 11:9, 23:11, 27:18, 35:9, 38:17, 40:7</p> <p>EQUALLY [1] - 30:21</p> <p>ERR [1] - 40:21</p> <p>ERRAND [1] - 27:6</p> <p>ESCORT [1] - 41:5</p> <p>ESQUIRE [6] - 1:15, 2:2, 2:3, 2:6, 2:7, 2:10</p> <p>ESTIMATE [1] - 21:6</p> <p>EVENING [3] - 3:2, 5:6, 20:4</p> <p>EVERY [5] - 15:6, 36:14, 36:16, 36:17, 39:4</p> <p>EVERYBODY [9] - 3:2, 17:6, 17:18, 28:10, 29:20, 32:1, 34:12, 39:23, 40:21</p> <p>EVERYONE [8] - 16:8, 16:15, 17:1, 23:9, 30:23, 30:24, 31:15, 33:9</p> <p>EVERYTHING [2] - 33:7, 42:20</p> <p>EVERYWHERE [1] - 15:6</p> <p>EXACTLY [1] - 32:22</p> <p>EXCEED [1] - 34:5</p> <p>EXCEPT [3] - 9:19, 31:24, 42:13</p> <p>EXCUSE [2] - 8:21, 19:23</p> <p>EXPECT [1] - 40:21</p> <p>EXPLAIN [4] - 5:21, 15:16, 15:23, 28:16</p> <p>EXTENT [3] - 9:9, 9:12, 14:23</p> <p>EYES [3] - 12:3, 35:12, 35:13</p>	<p>FAITH [8] - 28:1, 40:17, 40:21, 42:21, 42:23, 42:24, 43:8, 43:9</p> <p>FAR [9] - 6:10, 9:7, 13:12, 16:18, 19:19, 21:19, 24:6, 36:13, 36:14</p> <p>FAST [1] - 42:4</p> <p>FATALLY [1] - 5:16</p> <p>FCRR [1] - 1:20</p> <p>FEDERAL [8] - 5:23, 8:5, 15:3, 16:13, 16:14, 25:5, 25:13, 30:7</p> <p>FEEL [3] - 3:4, 3:7, 27:12</p> <p>FEET [47] - 9:18, 9:21, 10:2, 11:11, 11:13, 11:16, 11:22, 11:23, 12:14, 12:15, 12:16, 12:19, 13:9, 13:10, 13:20, 13:25, 15:4, 15:7, 15:8, 15:11, 15:12, 16:6, 16:7, 16:8, 17:18, 23:7, 23:8, 29:14, 30:4, 30:14, 30:17, 30:24, 30:25, 31:1, 31:12, 31:13, 31:14, 31:17, 32:2, 32:22</p> <p>FENCE [1] - 32:22</p> <p>FEW [1] - 27:7</p> <p>FEWER [3] - 19:20, 38:7, 38:10</p> <p>FIELD [57] - 2:7, 3:20, 14:18, 14:19, 15:16, 15:20, 16:4, 16:19, 17:21, 17:23, 18:25, 19:1, 19:7, 19:12, 19:20, 20:1, 21:2, 21:4, 21:8, 21:13, 21:16, 21:20, 21:23, 22:1, 22:4, 22:6, 22:10, 23:14, 23:23, 24:25, 26:5, 26:6, 30:7, 31:6, 31:19, 32:8, 32:15, 32:21, 33:2, 33:15, 33:22, 34:4, 34:14, 34:18, 34:23, 35:11, 36:8, 36:11, 37:14, 37:15, 37:16, 37:24, 38:12, 42:18, 42:25, 43:2, 43:10</p> <p>FIGURING [1] - 10:5</p> <p>FILE [1] - 25:13</p> <p>FILED [1] - 6:5</p> <p>FILING [1] - 6:8</p> <p>FIND [1] - 18:8</p>	<p>FINE [6] - 21:10, 25:15, 34:7, 36:13, 36:24</p> <p>FIRST [8] - 4:3, 9:19, 29:14, 30:24, 31:11, 32:2, 32:23, 38:14</p> <p>FIT [1] - 18:13</p> <p>FITS [2] - 40:1</p> <p>FIVE [2] - 10:2</p> <p>FLAWED [1] - 5:16</p> <p>FLAWS [1] - 5:20</p> <p>FLOOR [1] - 2:3</p> <p>FOND [1] - 42:3</p> <p>FOOL'S [1] - 27:6</p> <p>FOR [43] - 1:2, 1:3, 1:13, 1:18, 2:5, 2:9, 2:13, 3:12, 3:20, 4:4, 4:8, 4:15, 5:1, 5:15, 5:16, 6:5, 6:14, 7:1, 9:19, 11:3, 15:20, 15:22, 19:14, 20:1, 21:18, 21:21, 23:16, 24:8, 25:8, 25:19, 27:17, 28:6, 31:24, 32:8, 34:6, 35:9, 37:23, 38:18, 39:15, 39:16, 40:3, 42:13, 42:15</p> <p>FOREGOING [1] - 43:18</p> <p>FOUR [1] - 40:4</p> <p>FREE [4] - 25:1, 25:3, 31:22, 37:1</p> <p>FROM [27] - 4:19, 5:22, 6:6, 11:22, 11:23, 13:8, 13:10, 15:10, 15:11, 16:11, 16:25, 23:11, 24:5, 25:20, 27:2, 29:15, 30:25, 31:1, 31:12, 31:13, 31:14, 31:17, 32:2, 32:23, 38:2, 42:8, 43:19</p> <p>FRONT [5] - 23:10, 24:4, 39:15, 39:25, 40:8</p>
E				
<p>E-MAIL [2] - 18:8, 18:9</p> <p>EACH [13] - 15:10, 15:11, 19:13, 23:3, 23:11, 30:4, 30:14, 35:21, 36:12, 37:23, 38:8, 38:18, 42:16</p> <p>EAR [1] - 24:3</p> <p>EASTER [1] - 39:4</p> <p>EASTERN [1] - 1:2</p> <p>EASY [1] - 23:19</p> <p>EFFECT [1] - 14:10</p> <p>EFFECTIVE [1] - 6:21</p> <p>EFFORT [1] - 25:4</p> <p>EITHER [1] - 10:19</p> <p>ELECTION [10] - 19:8, 19:9, 19:23, 23:17, 34:20, 37:17, 38:1, 40:9, 43:4, 43:6</p> <p>ELECTIONS [6] - 1:7, 3:20, 6:4, 14:17, 14:22, 27:11</p> <p>ELOQUENTLY [1] - 24:13</p> <p>ELSE [4] - 13:10, 18:14, 27:22, 43:11</p> <p>EMERGENCY [2] - 1:13, 4:1</p> <p>EMPLOYEES [1] - 8:25</p> <p>END [1] - 26:12</p> <p>ENFORCE [1] - 5:23</p> <p>ENJOY [1] - 25:23</p> <p>ENOUGH [3] - 8:15, 17:20, 35:14</p> <p>ENSURE [1] - 32:14</p> <p>ENTERED [3] - 4:5, 4:12, 6:23</p>				
F				
<p>FACT [5] - 6:20, 17:16, 24:23, 27:9, 42:13</p> <p>FACTS [1] - 6:19</p> <p>FACTUAL [5] - 5:16, 5:18, 10:24, 11:10, 13:6</p> <p>FAIR [1] - 5:11</p> <p>FAIRNESS [1] - 8:14</p>				
G				
<p>GATHER [1] - 3:11</p> <p>GENERALITIES [1] - 8:16</p> <p>GENERALLY [3] - 9:15, 15:5, 35:7</p> <p>GENERATED [2] - 27:8, 41:5</p> <p>GENEROUS [1] - 30:11</p> <p>GENTLEMAN [1] - 4:19</p>				

<p>GET [7] - 9:15, 15:11, 16:10, 17:2, 17:14, 27:23, 33:7</p> <p>GETS [1] - 31:15</p> <p>GETTING [2] - 8:24, 24:19</p> <p>GIVE [3] - 33:11, 37:3</p> <p>GIVEN [8] - 4:8, 4:15, 8:22, 10:11, 10:17, 11:8, 11:9, 12:11</p> <p>GIVING [1] - 5:19</p> <p>GO [4] - 15:6, 22:17, 30:11, 31:22</p> <p>GOES [2] - 29:5, 30:14</p> <p>GOING [43] - 5:2, 5:4, 8:21, 10:25, 11:18, 12:8, 12:24, 13:1, 13:21, 13:23, 15:3, 16:15, 17:1, 17:2, 17:5, 17:12, 22:17, 22:18, 22:19, 22:20, 23:2, 23:3, 23:22, 25:7, 26:6, 26:11, 27:7, 32:3, 32:13, 32:24, 32:25, 33:7, 33:8, 37:3, 39:1, 39:24, 41:18, 42:2, 42:5, 42:20, 42:23</p> <p>GOOD [10] - 3:2, 20:4, 22:5, 26:4, 28:1, 40:17, 40:21, 42:21, 42:23, 42:24</p> <p>GORE [2] - 8:8, 8:11</p> <p>GOT [2] - 9:21, 18:19</p> <p>GRACIOUSLY [1] - 41:1</p> <p>GRANT [1] - 9:25</p> <p>GREAT [4] - 8:16, 18:4, 38:15, 39:9</p> <p>GREATER [1] - 11:15</p> <p>GROUPS [1] - 19:4</p> <p>GUESS [2] - 23:21, 41:23</p> <p>GUIDELINES [2] - 31:24, 40:9</p>	<p>34:8</p> <p>HAS [27] - 4:17, 13:16, 14:1, 14:9, 15:5, 15:24, 16:7, 16:16, 17:7, 18:17, 22:21, 22:22, 23:7, 33:8, 33:11, 33:17, 35:8, 35:12, 35:22, 36:18, 40:4, 40:5, 40:16, 41:1, 41:4, 41:20, 41:24</p> <p>HAVE [87] - 3:25, 4:2, 5:5, 5:25, 6:19, 6:22, 7:17, 10:4, 10:23, 12:7, 12:10, 12:13, 12:17, 12:18, 12:22, 12:23, 14:4, 14:6, 14:10, 14:15, 15:10, 16:10, 16:12, 18:6, 18:7, 20:14, 20:15, 20:19, 20:20, 22:4, 23:3, 23:4, 23:10, 23:12, 23:23, 24:17, 24:22, 25:5, 25:21, 26:7, 26:16, 26:21, 27:1, 27:18, 27:19, 28:15, 28:17, 29:25, 30:3, 30:13, 30:16, 30:18, 30:20, 30:22, 31:20, 32:6, 33:10, 33:13, 34:8, 35:10, 35:22, 36:15, 36:20, 37:8, 37:18, 38:7, 38:10, 38:25, 39:6, 39:7, 40:6, 40:17, 40:18, 40:20, 41:1, 41:5, 42:12, 42:25, 43:2</p> <p>HAVEN'T [2] - 36:21, 36:22</p> <p>HAVING [2] - 11:19, 14:12</p> <p>HAZARD [1] - 24:1</p> <p>HE [23] - 3:9, 6:3, 13:20, 13:23, 16:17, 22:18, 22:19, 22:22, 23:4, 24:14, 33:3, 33:7, 33:8, 33:9, 33:11, 33:13, 40:25, 41:1, 41:5, 42:10, 43:7</p> <p>HE'S [2] - 23:2, 33:8</p> <p>HEAD [3] - 14:17, 15:14, 24:25</p> <p>HEALTHY [1] - 43:14</p> <p>HEAR [7] - 12:23, 13:8, 13:9, 20:17, 22:3, 33:25, 40:17</p> <p>HEARD [2] - 5:20, 30:8</p>	<p>HEARING [4] - 1:13, 4:1, 4:4, 12:23</p> <p>HEAT [2] - 27:8, 41:4</p> <p>HEAVILY [1] - 42:14</p> <p>HELD [3] - 16:8, 16:15, 17:2</p> <p>HERE [32] - 3:13, 3:20, 4:19, 7:18, 9:20, 13:11, 13:24, 15:13, 16:13, 17:4, 17:14, 20:2, 20:11, 21:7, 22:1, 24:3, 24:13, 25:5, 25:21, 25:25, 26:3, 27:3, 27:6, 29:6, 30:22, 32:19, 33:9, 35:25, 37:7, 40:25, 41:14, 42:5</p> <p>HERE'S [1] - 39:13</p> <p>HESITATE [1] - 40:22</p> <p>HIM [4] - 20:2, 20:6, 33:11, 41:1</p> <p>HIS [4] - 21:16, 24:25, 33:10, 37:4</p> <p>HOLDING [1] - 29:10</p> <p>HONEST [1] - 42:19</p> <p>HONESTLY [2] - 18:19</p> <p>HONOR [59] - 3:22, 4:4, 4:5, 4:13, 5:6, 5:8, 5:14, 5:17, 6:17, 7:5, 7:16, 7:22, 9:4, 9:8, 10:12, 10:21, 11:14, 13:4, 13:16, 14:21, 14:24, 16:20, 17:5, 17:24, 18:17, 19:1, 19:8, 20:4, 21:24, 22:2, 23:15, 24:10, 24:21, 26:7, 26:23, 28:7, 28:13, 28:23, 29:11, 31:6, 31:19, 32:21, 33:2, 33:16, 33:22, 33:25, 34:4, 34:15, 34:18, 35:21, 37:12, 37:14, 37:24, 38:13, 41:8, 41:22, 42:18, 43:10, 43:12</p> <p>HONORABLE [1] - 1:11</p> <p>HONORED [1] - 32:14</p> <p>HOOKUP [1] - 3:11</p> <p>HOPE [1] - 13:22</p> <p>HOPEFUL [1] - 37:19</p> <p>HOURS [1] - 5:1</p> <p>HOW [30] - 6:25, 7:11, 8:17, 9:14, 11:13, 13:12, 14:1, 16:5, 16:6, 18:12, 18:13, 18:14, 18:22, 19:2, 19:18, 19:24, 20:19, 21:4, 21:5, 21:6,</p>	<p>21:11, 22:20, 27:1, 27:3, 34:23, 35:18, 36:3, 36:6, 36:19</p> <p>HOWEVER [6] - 23:5, 23:9, 24:5, 24:6, 38:21</p> <p>HUMAN [1] - 18:3</p> <p>HUNDRED [1] - 30:17</p>	<p>I</p> <p>I'D [1] - 10:4</p> <p>I'LL [4] - 9:25, 13:9, 34:11, 37:7</p> <p>I'M [39] - 3:8, 5:19, 8:15, 9:23, 11:1, 11:6, 12:18, 12:21, 14:11, 14:15, 15:1, 16:4, 16:5, 16:9, 17:2, 17:11, 17:12, 18:8, 20:11, 22:8, 22:9, 23:3, 24:3, 24:18, 30:6, 30:21, 31:6, 32:18, 33:7, 35:25, 37:19, 37:25, 38:2, 38:12, 39:22, 41:18, 42:2, 42:3</p> <p>I'VE [2] - 20:6, 30:10</p> <p>IDENTIFY [6] - 20:3, 21:12, 22:18, 33:17, 33:20, 34:6</p> <p>IF [72] - 3:4, 3:6, 3:7, 3:17, 6:24, 9:25, 11:22, 12:3, 12:5, 12:20, 12:25, 13:20, 14:14, 15:7, 15:18, 16:19, 17:9, 17:12, 17:16, 22:21, 22:25, 23:7, 23:8, 24:1, 24:4, 24:7, 24:23, 24:25, 25:2, 25:15, 25:25, 26:2, 26:7, 26:12, 26:16, 26:20, 27:7, 27:9, 27:10, 28:4, 29:10, 30:23, 31:16, 33:9, 33:17, 34:6, 34:14, 34:18, 35:16, 36:16, 36:25, 37:6, 37:8, 37:22, 38:6, 38:9, 39:7, 39:23, 40:1, 40:15, 40:19, 40:23, 41:2, 42:1, 42:9, 43:5, 43:7</p> <p>IMAGINE [1] - 38:19</p> <p>IMPLEMENT [1] - 42:24</p> <p>IMPLY [1] - 43:1</p> <p>IMPORTANT [1] - 13:5</p> <p>IN [76] - 1:1, 3:12, 4:6,</p>	<p>4:9, 4:16, 4:17, 4:25, 5:25, 6:20, 7:15, 8:8, 8:10, 8:12, 8:16, 10:8, 10:9, 10:14, 10:16, 11:4, 12:12, 13:17, 14:20, 14:24, 15:6, 15:22, 15:25, 16:2, 17:16, 18:11, 18:15, 19:3, 19:5, 19:6, 19:13, 19:19, 19:22, 19:23, 20:12, 20:13, 21:9, 22:14, 22:19, 23:10, 23:14, 24:23, 25:4, 25:5, 25:9, 25:14, 26:10, 27:9, 27:17, 28:9, 29:12, 30:14, 31:24, 32:10, 32:25, 33:18, 33:21, 35:23, 36:12, 37:25, 38:2, 38:19, 40:15, 40:16, 40:21, 40:25, 41:12, 41:19, 42:21, 42:23, 43:4, 43:19</p> <p>INADEQUATE [2] - 36:25, 37:1</p> <p>INAPPROPRIATE [1] - 22:23</p> <p>INAPPROPRIATELY [2] - 9:12, 22:25</p> <p>INC [1] - 1:4</p> <p>INCONSISTENT [1] - 24:22</p> <p>INCORRECT [1] - 6:2</p> <p>INDICATED [2] - 33:3, 41:25</p> <p>INDICATING [1] - 29:7</p> <p>INDICATING [1] - 39:11</p> <p>INDIVIDUAL [2] - 9:11, 11:20</p> <p>INFORM [1] - 38:9</p> <p>INFRINGED [1] - 8:1</p> <p>INITIALLY [1] - 29:17</p> <p>INJUNCTION [1] - 1:13</p> <p>INJUNCTIVE [1] - 5:22</p> <p>INJURY [2] - 10:5, 16:14</p> <p>INTEND [1] - 41:12</p> <p>INTERNET [1] - 12:25</p> <p>INTERNETO [1] - 19:17</p> <p>INTERVENTION [1] - 42:13</p> <p>INTO [8] - 3:6, 3:17, 4:10, 16:10, 17:14, 24:19, 27:24, 33:10</p> <p>INVOKED [1] - 7:24</p> <p>IRRATIONAL [1] -</p>
--	--	---	---	--	--

10:1 IS [177] - 3:4, 3:9, 3:11, 3:12, 3:13, 3:14, 3:21, 4:19, 4:20, 5:5, 5:9, 5:16, 5:24, 6:2, 6:10, 6:19, 6:25, 7:7, 7:25, 8:3, 8:17, 8:22, 8:24, 9:3, 9:20, 10:5, 10:13, 10:15, 10:19, 10:24, 11:11, 11:19, 11:23, 12:24, 12:25, 13:1, 13:2, 13:4, 13:5, 13:21, 13:23, 14:23, 14:24, 15:5, 15:7, 15:8, 16:1, 16:8, 16:9, 16:12, 16:13, 16:14, 16:15, 16:17, 17:1, 17:4, 17:5, 17:16, 17:17, 17:19, 18:4, 19:8, 19:13, 20:2, 20:24, 20:25, 21:2, 21:10, 21:18, 21:20, 22:11, 22:17, 22:18, 22:19, 22:20, 22:23, 22:25, 23:6, 23:7, 23:9, 23:21, 23:22, 24:2, 24:6, 24:14, 24:16, 24:20, 24:25, 25:5, 25:6, 25:7, 25:15, 26:11, 26:12, 26:14, 27:1, 27:6, 27:7, 27:9, 27:12, 27:13, 27:16, 27:24, 28:9, 28:17, 28:19, 28:24, 28:25, 29:1, 29:5, 29:14, 30:9, 30:23, 30:24, 31:4, 31:8, 31:9, 31:11, 31:18, 32:2, 32:7, 32:9, 32:10, 32:13, 32:14, 32:22, 33:7, 33:16, 34:3, 34:16, 34:20, 34:22, 35:21, 35:22, 36:25, 37:3, 37:18, 38:5, 38:6, 38:9, 38:15, 38:20, 38:25, 39:5, 39:14, 39:15, 39:19, 39:24, 40:2, 40:25, 41:6, 41:14, 41:23, 41:24, 42:4, 42:6, 42:9, 42:16, 42:24, 43:5, 43:8, 43:9, 43:18 ISN'T [1] - 17:19 ISSUE [12] - 8:7, 8:10, 8:14, 9:13, 9:16, 16:13, 22:7, 24:11, 24:14, 24:16, 24:20, 42:2 ISSUED [2] - 6:3, 14:9	ISSUES [2] - 18:4, 24:11 IT [60] - 3:5, 3:7, 4:2, 5:1, 5:9, 5:16, 6:19, 6:23, 7:7, 7:23, 8:22, 12:4, 12:24, 13:4, 13:5, 13:21, 14:1, 15:8, 16:17, 16:20, 17:8, 19:16, 20:25, 21:3, 23:1, 23:5, 24:7, 24:13, 24:23, 24:25, 25:2, 25:6, 25:8, 25:11, 25:12, 25:20, 26:2, 26:11, 27:3, 27:6, 27:12, 28:16, 28:17, 31:9, 31:18, 32:4, 32:22, 34:2, 34:4, 35:13, 36:2, 38:3, 38:9, 38:11, 38:16, 39:5, 40:2, 40:4, 42:24 IT'S [35] - 3:8, 5:10, 5:11, 5:13, 5:14, 7:9, 8:19, 8:20, 9:23, 12:20, 14:20, 15:7, 15:8, 15:18, 20:8, 22:20, 23:7, 23:8, 23:16, 24:1, 25:10, 25:15, 30:15, 34:5, 34:11, 35:16, 38:3, 39:3, 39:24, 40:1, 40:2, 41:20, 42:13 ITS [3] - 6:22, 35:12, 35:13	35:4, 35:6, 35:9, 38:9, 38:11, 39:22, 41:11 K KEEP [3] - 27:3, 32:4, 32:22 KEEPING [1] - 13:24 KEPT [3] - 6:16, 6:20, 35:7 KIM [1] - 40:25 KIND [4] - 7:23, 23:12, 27:21, 27:25 KNOW [37] - 6:10, 7:24, 9:7, 9:24, 10:2, 10:19, 12:20, 12:22, 14:6, 15:19, 16:2, 17:7, 18:9, 18:12, 18:20, 19:16, 20:14, 20:15, 21:3, 21:4, 21:13, 22:6, 22:23, 23:23, 25:7, 27:14, 27:16, 33:17, 34:21, 34:23, 35:1, 36:14, 40:5, 42:3 KNOWLEDGE [2] - 9:5, 9:6 KNOWN [1] - 28:2	LEVEL [1] - 20:14 LIGHT [3] - 27:8, 41:4, 41:19 LIKE [22] - 4:21, 7:23, 14:3, 14:7, 15:8, 16:23, 16:24, 20:22, 22:11, 27:9, 28:11, 28:12, 30:25, 35:6, 35:10, 35:14, 38:15, 38:19, 38:24, 39:5, 40:12 LIKELY [1] - 41:25 LIMITATIONS [1] - 35:16 LINE [1] - 29:4 LINES [1] - 29:9 LISTEN [2] - 27:23 LISTS [1] - 4:24 LITIGATE [1] - 41:17 LITIGATING [1] - 41:12 LITIGATION [2] - 25:19, 26:3 LITTLE [5] - 4:10, 6:24, 7:19, 15:16, 29:9 LIVE [1] - 20:7 LIVING [1] - 29:1 LOGAN [1] - 2:3 LONG [10] - 4:18, 4:21, 16:8, 23:9, 24:5, 29:4, 38:11, 40:8, 41:23, 41:24 LOOK [6] - 14:4, 17:7, 19:16, 24:18, 25:7, 40:3 LOOKED [1] - 21:7 LOOKING [1] - 12:4 LOOKS [2] - 38:24, 39:5 LOT [3] - 26:13, 27:8, 29:25 LOUDER [1] - 4:10	MANDATING [1] - 4:13 MANY [28] - 7:11, 11:13, 13:9, 13:10, 18:12, 18:13, 18:14, 18:22, 19:2, 19:18, 19:24, 20:15, 20:19, 21:4, 21:5, 21:6, 21:11, 23:5, 23:10, 34:23, 34:24, 35:2, 35:18, 36:3, 36:6, 36:19, 38:21 MARCUS [77] - 1:15, 3:13, 3:15, 3:25, 4:3, 4:12, 5:20, 7:20, 7:21, 8:2, 8:6, 8:10, 8:19, 8:21, 9:1, 9:25, 10:10, 10:15, 10:20, 10:23, 11:5, 11:8, 11:14, 11:18, 11:25, 12:5, 12:10, 12:15, 16:16, 16:25, 17:14, 17:19, 17:24, 18:3, 18:16, 18:23, 21:12, 22:17, 26:8, 26:15, 26:19, 28:7, 28:12, 28:14, 28:15, 28:21, 28:23, 28:25, 29:4, 29:8, 29:11, 29:14, 29:17, 29:20, 29:22, 30:2, 30:5, 30:8, 30:12, 30:18, 31:3, 33:1, 33:2, 33:7, 33:8, 33:17, 33:25, 36:1, 37:11, 37:12, 41:8, 41:10, 41:16, 41:22, 42:8, 43:7, 43:12 MARCUS'S [3] - 6:1, 13:13, 27:20 MARKET [1] - 1:21 MARSHALS [2] - 41:5, 43:15 MASK [3] - 3:8, 3:10, 3:18 MATCHES [1] - 12:12 MATTER [5] - 25:14, 32:5, 37:19, 42:14, 43:20 MAXIMUM [1] - 34:19 MAY [11] - 10:20, 14:5, 16:17, 17:24, 25:11, 28:21, 40:3, 40:4, 40:17 MAYBE [4] - 22:6, 30:20, 31:13, 31:14 ME [29] - 6:14, 7:19, 8:21, 11:23, 12:2, 12:24, 15:2, 15:3, 15:9, 15:12, 17:9	
	J JAMES [1] - 1:8 JEREMY [1] - 4:19 JEROME [1] - 1:15 JMARCUS@MARCUSLAW.US [1] - 1:17 JOB [1] - 29:3 JOINTLY [1] - 37:5 JUDGE [9] - 15:3, 15:9, 20:9, 37:10, 38:24, 39:3, 39:8, 40:11, 43:16 JUDICIAL [1] - 42:12 JURISDICTION [5] - 12:22, 23:16, 30:22, 40:17, 40:18 JUST [28] - 5:19, 6:14, 9:24, 12:23, 13:12, 13:13, 15:22, 19:5, 20:15, 23:12, 24:1, 24:2, 25:4, 25:6, 26:3, 26:25, 27:14, 34:8, 34:16, 35:3	LAND [2] - 9:23, 12:22 LARGER [2] - 7:10, 37:2 LAST [2] - 21:7, 22:11 LATER [2] - 20:10, 25:11 LAUGH [1] - 18:21 LAW [8] - 8:5, 17:12, 27:13, 37:3, 37:6, 40:22, 42:10, 43:9 LAWSUIT [1] - 41:25 LAWYER [4] - 14:4, 14:16, 23:25, 29:1 LAWYERS [3] - 28:3, 42:15 LEAST [7] - 9:10, 10:6, 15:11, 24:15, 25:9, 26:11, 31:20 LEAVE [1] - 25:6 LEAVING [1] - 41:3 LEFT [1] - 4:25 LEGAL [3] - 5:16, 5:20, 18:7 LENGTH [1] - 18:1 LESS [2] - 6:24, 12:19 LET [3] - 6:14, 7:19, 15:3 LET'S [1] - 5:11	L LAND [2] - 9:23, 12:22 LARGER [2] - 7:10, 37:2 LAST [2] - 21:7, 22:11 LATER [2] - 20:10, 25:11 LAUGH [1] - 18:21 LAW [8] - 8:5, 17:12, 27:13, 37:3, 37:6, 40:22, 42:10, 43:9 LAWSUIT [1] - 41:25 LAWYER [4] - 14:4, 14:16, 23:25, 29:1 LAWYERS [3] - 28:3, 42:15 LEAST [7] - 9:10, 10:6, 15:11, 24:15, 25:9, 26:11, 31:20 LEAVE [1] - 25:6 LEAVING [1] - 41:3 LEFT [1] - 4:25 LEGAL [3] - 5:16, 5:20, 18:7 LENGTH [1] - 18:1 LESS [2] - 6:24, 12:19 LET [3] - 6:14, 7:19, 15:3 LET'S [1] - 5:11	M MAIL [4] - 4:9, 4:17, 18:8, 18:9 MAIL-IN [2] - 4:9, 4:17 MAJOR [1] - 19:12 MAKE [10] - 10:20, 15:25, 16:16, 17:3, 20:22, 22:1, 27:17, 29:1, 41:11, 42:19 MAKER [1] - 17:17 MAKES [1] - 32:18 MAKING [1] - 15:2 MANAGEMENT [1] - 42:3 MANDATED [1] - 4:7	

17:15, 19:23, 23:16, 26:2, 27:6, 28:6, 34:10, 36:6, 36:7, 37:5, 38:9, 39:2, 40:19, 40:20, 42:11, 42:17
MEAN [5] - 13:5, 19:10, 25:6, 26:25, 43:1
MEASURE [1] - 9:21
MEASURED [1] - 9:21
MEDIA [2] - 3:12, 38:16
MEETING [1] - 33:19
MEGHAN [2] - 2:6, 7:1
MEMBER [2] - 11:1, 14:23
MENTIONED [1] - 16:7
MERCER [1] - 4:20
MERION [1] - 1:16
MET [1] - 20:6
MICROPHONE [3] - 3:6, 3:17, 4:11
MIDDLE [1] - 6:13
MIGHT [6] - 16:19, 23:1, 24:21, 25:10, 37:3
MILL [1] - 23:12
MIND [1] - 26:10
MINIMUM [1] - 7:10
MINUTE [2] - 6:15, 26:7
MISCONCEIVES [1] - 38:24
MISINTERPRETATIO
N [1] - 13:23
MISREMEMBERED
[1] - 39:2
MISREPRESENTED
[1] - 40:20
MISS [1] - 31:10
MISSED [1] - 31:7
MISSING [1] - 39:12
MISUNDERSTOOD
[1] - 39:22
MOMENT [1] - 30:8
MOOT [3] - 12:25, 23:22, 41:19
MOOTS [2] - 24:23, 24:25
MORE [21] - 6:18, 7:19, 12:7, 12:18, 13:8, 19:3, 21:18, 21:21, 21:23, 24:8, 27:8, 29:25, 30:25, 35:18, 36:21, 36:22, 38:7, 41:4, 41:6, 42:6
MORNING [7] - 4:6, 4:13, 6:3, 9:17,

25:12, 37:7, 37:8
MOST [1] - 32:11
MOSTLY [1] - 15:7
MOTION [4] - 1:13, 5:9, 5:15, 41:18
MOVED [1] - 9:20
MOVIE [1] - 39:2
MR [183] - 3:13, 3:15, 3:19, 3:20, 3:22, 3:24, 3:25, 4:3, 4:12, 5:7, 5:8, 5:13, 5:20, 6:1, 6:17, 7:20, 7:21, 8:2, 8:6, 8:10, 8:19, 8:21, 9:1, 9:25, 10:10, 10:15, 10:20, 10:23, 11:5, 11:8, 11:14, 11:18, 11:25, 12:5, 12:10, 12:15, 12:21, 13:13, 13:15, 13:19, 14:8, 14:18, 14:19, 15:3, 15:16, 15:20, 16:4, 16:16, 16:19, 16:25, 17:14, 17:19, 17:21, 17:23, 17:24, 18:3, 18:16, 18:23, 18:25, 19:1, 19:7, 19:12, 19:20, 20:1, 20:4, 20:7, 20:8, 20:19, 21:2, 21:4, 21:8, 21:12, 21:13, 21:16, 21:20, 21:23, 22:1, 22:4, 22:6, 22:10, 22:17, 23:14, 23:23, 24:25, 26:5, 26:6, 26:8, 26:15, 26:19, 26:23, 26:24, 26:25, 27:16, 27:20, 28:7, 28:12, 28:14, 28:15, 28:21, 28:23, 28:25, 29:4, 29:8, 29:11, 29:14, 29:17, 29:20, 29:22, 30:2, 30:5, 30:7, 30:8, 30:12, 30:18, 31:3, 31:6, 31:19, 32:8, 32:13, 32:15, 32:21, 33:1, 33:2, 33:7, 33:8, 33:15, 33:17, 33:22, 33:23, 33:25, 34:4, 34:14, 34:18, 34:23, 34:24, 35:1, 35:7, 35:11, 35:18, 35:20, 36:1, 36:4, 36:5, 36:8, 36:11, 36:14, 36:17, 36:20, 37:10, 37:11, 37:12, 37:13, 37:14, 37:15, 37:16, 37:24, 38:12, 38:22, 38:23, 39:3, 39:6, 39:7,

39:11, 39:12, 39:14, 39:19, 40:11, 40:14, 40:25, 41:8, 41:10, 41:16, 41:22, 42:8, 42:18, 42:25, 43:2, 43:7, 43:10, 43:12
MS [22] - 3:19, 7:1, 7:4, 7:9, 7:13, 7:16, 9:3, 9:4, 9:8, 9:16, 9:20, 12:21, 13:3, 13:4, 15:14, 20:24, 21:1, 22:24, 24:9, 24:10, 24:20, 33:12
MUCH [3] - 4:4, 25:22, 25:24
MUMMERS [1] - 39:16
MY [27] - 4:7, 4:8, 4:15, 6:18, 6:19, 9:6, 11:11, 20:7, 23:17, 23:21, 23:24, 24:3, 24:12, 26:7, 28:25, 29:1, 35:20, 37:3, 37:6, 37:16, 38:13, 40:22, 41:23, 42:10, 43:8, 43:13, 43:14
MYSELF [2] - 18:5, 35:23

N

NAME [5] - 14:7, 17:17, 18:8, 24:2, 32:6
NAMES [7] - 4:23, 4:24, 22:14, 33:1, 33:11, 33:15, 33:18
NEAR [1] - 22:10
NECESSARILY [1] - 36:11
NECESSARY [1] - 42:5
NEED [10] - 3:5, 3:16, 14:11, 24:8, 24:14, 25:13, 25:19, 40:3, 41:6, 42:6
NEEDED [1] - 29:25
NEEDS [3] - 5:17, 37:6, 37:8
NEGOTIATE [1] - 42:21
NEGOTIATED [1] - 42:23
NEVER [3] - 6:19, 20:6, 34:10
NEXT [5] - 27:7, 31:12, 31:13, 31:17, 31:18
NICE [6] - 3:23, 7:3, 7:4, 14:18, 14:19, 14:21
NO [26] - 6:17, 9:4,

9:8, 12:10, 13:23, 15:1, 16:16, 17:18, 18:2, 18:14, 19:7, 26:14, 27:9, 30:6, 31:15, 31:24, 33:12, 35:18, 36:17, 38:5, 39:3, 42:22, 42:25
NON [1] - 10:15
NONE [1] - 31:15
NONZERO [2] - 10:16, 10:18
NOT [61] - 5:2, 5:3, 5:24, 6:20, 7:21, 8:19, 8:20, 8:22, 9:8, 9:9, 9:23, 10:4, 10:9, 10:10, 10:16, 11:8, 11:9, 11:11, 12:8, 12:21, 13:12, 14:15, 16:2, 16:4, 16:5, 16:12, 16:18, 17:11, 18:11, 21:1, 21:13, 24:14, 24:18, 25:15, 25:16, 25:18, 25:23, 27:7, 28:17, 30:21, 32:18, 33:3, 33:7, 35:1, 36:11, 36:17, 37:19, 40:3, 40:16, 40:17, 41:14, 41:15, 41:16, 41:24, 42:1, 42:2, 43:8, 43:9
NOTE [1] - 37:25
NOTED [1] - 6:4
NOTHING [2] - 32:18, 42:8
NOTICE [1] - 4:4
NOVEMBER [1] - 1:9
NOW [11] - 3:8, 4:14, 11:24, 21:6, 23:19, 24:16, 24:17, 26:13, 28:9, 35:13, 36:15
NUMBER [22] - 1:3, 3:12, 10:16, 10:18, 15:4, 16:6, 18:3, 18:5, 18:16, 20:24, 20:25, 21:3, 22:11, 23:11, 34:1, 35:3, 35:4, 36:1, 36:25, 37:1, 37:2, 37:4
NUMBERS [2] - 34:9, 38:17
NUTS [2] - 23:1

O

OBEY [1] - 32:20
OBSERVE [3] - 10:3, 10:4, 11:20
OBSERVED [1] - 18:5
OBSERVER [7] - 9:9, 21:9, 22:22, 35:17,

35:23, 38:1
OBSERVERS [19] - 7:14, 9:14, 11:19, 13:12, 13:13, 15:25, 18:11, 19:9, 19:11, 21:9, 22:14, 31:16, 31:21, 31:22, 34:1, 34:6, 37:21, 39:16, 39:23
OBSERVING [1] - 21:6
OBVIATE [3] - 24:7, 25:13, 25:19
OBVIOUSLY [2] - 19:15, 40:6
OCCUPATIONAL [1] - 24:1
OCTOBER [1] - 22:12
OF [147] - 1:2, 1:7, 3:13, 3:20, 4:3, 4:21, 5:20, 5:22, 6:1, 6:4, 6:5, 6:8, 6:9, 6:10, 6:13, 6:16, 6:18, 6:20, 6:21, 7:2, 7:6, 7:17, 7:23, 7:25, 8:4, 8:7, 8:9, 9:1, 9:5, 9:6, 9:18, 10:3, 10:6, 10:16, 10:18, 11:1, 11:2, 11:19, 11:20, 11:21, 13:23, 13:24, 14:17, 14:22, 14:24, 15:21, 15:23, 15:25, 16:6, 16:10, 17:1, 17:9, 17:13, 17:15, 18:3, 18:4, 18:5, 18:10, 18:14, 19:18, 19:22, 19:24, 20:11, 21:11, 22:12, 22:17, 23:12, 23:22, 24:3, 24:5, 24:11, 24:15, 24:16, 25:13, 25:19, 25:23, 26:11, 26:13, 26:18, 26:22, 26:23, 27:11, 27:21, 27:25, 28:2, 28:5, 28:16, 29:5, 29:25, 30:4, 30:14, 30:24, 30:25, 31:1, 31:10, 31:11, 31:13, 31:14, 31:15, 31:17, 31:18, 31:21, 31:23, 32:4, 32:6, 32:10, 32:11, 32:13, 32:15, 32:20, 32:23, 34:1, 35:21, 35:23, 35:24, 37:17, 38:1, 38:2, 38:3, 38:9, 38:17, 38:24, 39:16, 39:17, 39:19, 39:20, 39:24, 40:7, 40:9, 40:19, 40:22, 40:25,

<p>41:2, 41:19, 42:3, 43:14, 43:19</p> <p>OFF [3] - 15:24, 20:9, 35:13</p> <p>OFFERED [1] - 28:17</p> <p>OFFERING [1] - 28:20</p> <p>OFFICE [1] - 14:5</p> <p>OFFICER [1] - 32:13</p> <p>OFFICERS [1] - 28:2</p> <p>OFFICIAL [3] - 1:20, 4:20, 43:24</p> <p>OKAY [6] - 9:23, 22:5, 28:6, 28:22, 40:15, 43:11</p> <p>OLD [2] - 8:15, 12:3</p> <p>ON [55] - 3:13, 3:18, 4:4, 4:18, 4:23, 5:4, 6:12, 10:25, 11:18, 12:25, 13:23, 14:13, 15:12, 16:1, 16:20, 17:3, 17:4, 17:12, 18:18, 19:7, 19:22, 20:2, 20:7, 20:11, 20:13, 22:12, 25:11, 25:12, 27:2, 27:5, 28:5, 30:8, 30:14, 31:19, 32:3, 34:11, 34:24, 35:12, 35:22, 35:24, 36:6, 36:12, 38:14, 38:21, 39:3, 39:15, 39:17, 39:20, 39:24, 39:25, 40:6, 40:21</p> <p>ONE [34] - 2:3, 2:7, 5:10, 7:17, 9:10, 11:15, 11:17, 15:21, 17:10, 17:25, 18:4, 18:14, 19:8, 19:14, 20:16, 22:1, 24:11, 26:14, 27:3, 30:8, 31:15, 32:10, 34:5, 35:16, 38:2, 38:21, 39:17, 39:25, 40:4, 40:6, 40:16, 41:8</p> <p>ONE-PAGE [1] - 5:10</p> <p>ONLY [5] - 24:4, 24:11, 29:18, 35:24, 40:4</p> <p>OPEN [1] - 37:4</p> <p>OPENED [1] - 11:23</p> <p>OPENING [3] - 11:20, 12:4, 12:6</p> <p>OPENS [1] - 3:1</p> <p>OPERATES [1] - 6:8</p> <p>OR [23] - 3:9, 8:5, 9:13, 10:2, 10:3, 10:9, 16:12, 16:13, 19:5, 22:22, 26:12, 31:14, 31:17, 31:18, 32:17, 35:4, 37:3,</p>	<p>38:7, 40:4, 40:16, 40:17</p> <p>ORDER [19] - 4:5, 4:12, 4:17, 5:15, 5:21, 5:22, 5:23, 6:2, 6:6, 6:9, 6:22, 7:20, 7:22, 9:17, 14:9, 16:12, 25:2, 42:3</p> <p>ORDERED [1] - 6:12</p> <p>ORDERS [1] - 32:20</p> <p>OTHER [18] - 8:25, 9:13, 10:23, 14:16, 15:10, 15:11, 17:25, 18:17, 19:17, 28:5, 29:23, 32:18, 38:8, 38:21, 39:20, 40:1, 40:5, 42:16</p> <p>OTHERWISE [3] - 23:2, 23:11, 37:2</p> <p>OUR [4] - 9:5, 9:18, 41:13, 43:15</p> <p>OUT [14] - 6:16, 6:20, 9:21, 10:5, 12:18, 13:24, 22:25, 23:15, 24:3, 26:17, 26:22, 28:4, 38:16, 40:16</p> <p>OUTSIDE [1] - 37:17</p> <p>OVER [3] - 10:2, 12:8, 20:2</p> <p>OVERSEEING [1] - 15:22</p> <p>OVERVIEW [1] - 5:20</p> <p>OWN [1] - 35:15</p>	<p>19:11, 19:13, 35:6, 35:14, 37:1, 37:3, 37:5, 37:20, 39:17, 40:19, 41:20</p> <p>PARTY [9] - 9:2, 19:14, 19:25, 20:2, 20:12, 27:12, 34:5, 35:24, 38:2</p> <p>PASSED [1] - 37:18</p> <p>PAUL [1] - 1:11</p> <p>PENDENCY [1] - 6:10</p> <p>PENDING [4] - 6:11, 24:15, 32:4, 32:15</p> <p>PENNSYLVANIA [8] - 1:2, 4:6, 6:6, 6:7, 6:11, 19:8, 24:16, 32:16</p> <p>PEOPLE [40] - 6:16, 6:19, 7:12, 10:1, 10:3, 10:8, 10:16, 10:18, 11:2, 14:7, 15:3, 17:9, 17:10, 18:5, 18:10, 18:12, 18:23, 19:2, 20:19, 21:5, 21:6, 22:13, 22:18, 23:4, 23:5, 23:10, 25:20, 25:21, 30:3, 32:10, 32:24, 33:10, 37:23, 38:7, 38:8, 38:10, 38:14, 38:17, 40:4</p> <p>PER [10] - 19:14, 27:3, 34:5, 34:13, 34:16, 35:5, 35:17, 36:2</p> <p>PERSONALLY [1] - 18:6</p> <p>PETITION [3] - 6:5, 6:8, 6:10</p> <p>PHILADELPHIA [10] - 1:6, 1:10, 1:22, 2:4, 2:8, 2:12, 6:4, 7:2, 19:23, 35:13</p> <p>PHONE [2] - 17:3, 37:4</p> <p>PHOTO [2] - 39:6, 39:7</p> <p>PHOTOGRAPHY [1] - 31:24</p> <p>PHYSICAL [1] - 41:3</p> <p>PICK [2] - 35:3, 35:4</p> <p>PICKED [1] - 15:5</p> <p>PILOTING [1] - 12:2</p> <p>PLAINTIFF [7] - 1:18, 3:14, 8:12, 11:4, 28:18, 33:8, 42:8</p> <p>PLEASE [9] - 3:3, 4:11, 18:20, 20:17, 20:21, 28:10, 31:5, 43:14</p> <p>PLUS [2] - 19:14, 34:5</p>	<p>POINT [6] - 14:8, 16:16, 20:10, 22:1, 22:7, 23:15</p> <p>POINTS [1] - 19:7</p> <p>POLICE [1] - 40:19</p> <p>POLITICAL [2] - 19:10, 19:12</p> <p>POSITION [1] - 16:2</p> <p>POSSIBLE [3] - 20:8, 20:23, 26:1</p> <p>POSTURE [1] - 25:3</p> <p>PRACTICE [1] - 23:14</p> <p>PRE [1] - 15:23</p> <p>PRE-CANVASS [1] - 15:23</p> <p>PREJUDICE [2] - 41:19, 41:21</p> <p>PREJUDICED [3] - 26:14, 27:13, 41:16</p> <p>PREPARED [7] - 17:16, 17:17, 24:13, 30:7, 31:5, 31:9, 32:3</p> <p>PRESENCE [1] - 27:13</p> <p>PRESENT [7] - 7:17, 8:3, 23:4, 23:5, 26:17, 27:11, 29:18</p> <p>PRESIDENT [2] - 1:4, 11:3</p> <p>PRESIDENTIAL [2] - 19:17, 27:10</p> <p>PRESUMABLY [1] - 29:24</p> <p>PRESUME [1] - 5:22</p> <p>PRINTED [1] - 38:16</p> <p>PROBABLY [4] - 17:13, 21:8, 21:23, 30:25</p> <p>PROBLEM [9] - 5:5, 11:7, 17:25, 22:21, 35:20, 38:6, 38:10, 42:10, 43:5</p> <p>PROCEDURAL [1] - 6:7</p> <p>PROCEDURALLY [1] - 5:24</p> <p>PROCEDURES [3] - 22:13, 33:19</p> <p>PROCEEDINGS [6] - 1:24, 6:2, 20:12, 20:13, 43:17, 43:19</p> <p>PROCESS [4] - 7:24, 8:6, 8:17, 26:3</p> <p>PRODUCE [1] - 4:21</p> <p>PRODUCED [1] - 1:25</p> <p>PROFESSOR [1] - 17:12</p> <p>PROMPTLY [1] - 6:5</p> <p>PROMULGATED [1] -</p>	<p>22:12</p> <p>PROPERLY [3] - 23:24, 34:14, 34:19</p> <p>PROPOSED [2] - 35:5</p> <p>PROTECTION [3] - 8:7, 8:17, 8:18</p> <p>PROTOCOLS [1] - 22:15</p> <p>PROVIDE [1] - 33:13</p> <p>PROVIDED [1] - 32:25</p> <p>PROVIDING [1] - 15:9</p> <p>PROVISION [1] - 8:4</p> <p>PUBLIC [1] - 16:2</p> <p>PUDLIN [1] - 2:3</p> <p>PULL [1] - 3:7</p> <p>PULLED [1] - 24:3</p> <p>PURPOSE [1] - 11:19</p> <p>PUT [2] - 4:18, 16:20</p>
Q				
<p>QUARTER [2] - 5:12, 5:13</p> <p>QUESTION [3] - 14:24, 16:10, 31:7</p> <p>QUESTIONS [2] - 5:18, 23:16</p> <p>QUIBBLE [1] - 17:19</p> <p>QUIT [1] - 29:3</p> <p>QUITE [1] - 31:8</p>				
R				
<p>RACE [4] - 10:3, 17:10, 36:12</p> <p>RACES [2] - 36:9, 36:10</p> <p>RAILING [1] - 24:5</p> <p>RATHER [2] - 25:22, 25:24</p> <p>REACH [3] - 5:18, 13:11, 14:12</p> <p>REACHED [1] - 41:20</p> <p>READ [1] - 12:25</p> <p>REALLY [11] - 9:7, 10:13, 13:11, 13:22, 14:3, 20:21, 20:22, 26:9, 27:5, 27:9, 38:8</p> <p>REASONABLE [1] - 26:10</p> <p>REASONABLY [2] - 28:4, 40:24</p> <p>REASONS [1] - 5:17</p> <p>RECESS [1] - 16:24</p> <p>RECOGNIZED [1] - 30:21</p> <p>RECORD [10] - 13:6, 13:22, 14:13, 15:12, 16:20, 17:4, 20:9,</p>				

22:22, 31:20, 43:19 RECORDED [1] - 1:24 RED [2] - 29:4, 38:20 REELECTION [1] - 27:10 REFERRED [1] - 22:24 REFLECT [1] - 13:22 REGARDING [1] - 19:2 REGULATIONS [2] - 14:25, 37:18 REID [1] - 9:20 RELIGION [1] - 10:4 REMAINING [2] - 24:11 REMEDIES [1] - 5:25 REMEMBER [2] - 8:15, 25:9 REMOVED [1] - 31:25 REMOVES [1] - 9:11 REPLACED [1] - 42:1 REPORTER [2] - 1:20, 43:24 REPRESENT [3] - 14:22, 18:13, 23:24 REPRESENTATION [2] - 11:10, 27:20 REPRESENTATIVE [2] - 14:16, 36:15 REPRESENTATIVES [9] - 9:1, 18:14, 19:18, 19:21, 19:24, 26:17, 26:21, 27:21, 36:21 REPRESENTED [2] - 16:14, 21:12 REPRESENTING [4] - 11:2, 11:3, 32:12, 35:25 REPUBLICAN [3] - 26:16, 31:21, 34:24 REPUBLICANS [1] - 35:10 REQUEST [3] - 3:4, 25:13, 38:4 REQUESTS [1] - 38:1 REQUIRE [2] - 23:18, 33:19 REQUIRED [1] - 22:13 REQUIREMENTS [2] - 19:2, 43:4 RESOLUTION [3] - 25:19, 32:4, 32:15 RESOLVE [2] - 25:4, 40:24 RESPECT [1] - 17:6 RESPECTED [1] - 28:3 RESPECTFULLY [1] -	10:20 RESPONSIBLE [2] - 13:11, 15:22 RESTRAINING [1] - 5:15 RETURNED [1] - 33:5 REVIEW [1] - 7:20 REVISED [2] - 37:7, 37:8 RIGHT [24] - 3:14, 3:21, 7:25, 11:24, 12:11, 13:3, 16:13, 16:18, 17:8, 18:7, 20:15, 21:6, 24:16, 28:14, 29:10, 30:13, 30:16, 30:18, 30:20, 31:2, 31:8, 35:13, 35:22, 43:13 RIPE [1] - 8:3 RISE [1] - 28:8 ROBERT [1] - 2:2 ROOM [31] - 4:9, 4:16, 5:2, 5:3, 6:16, 6:20, 6:25, 7:6, 10:9, 10:11, 10:14, 10:16, 11:4, 11:9, 12:18, 12:19, 18:11, 18:15, 19:3, 19:5, 19:13, 19:19, 21:18, 21:20, 27:17, 28:16, 30:15, 33:10, 35:23, 38:24 ROUGH [1] - 28:15 ROW [1] - 9:19 ROWS [1] - 29:12 RPR [1] - 1:20 RULE [1] - 12:15 RULES [2] - 6:7, 9:10 RULING [2] - 24:22, 32:18 RUNNING [1] - 14:5	22:11, 22:18, 23:3, 25:4, 27:19, 27:25, 34:10, 34:11, 36:1, 36:20, 37:9, 37:21, 39:22 SAYING [5] - 10:8, 17:11, 17:12, 37:25, 39:22 SAYS [3] - 13:8, 13:10, 19:9 SCHILLER [1] - 2:3 SCHMIDT [1] - 32:10 SEA [2] - 38:20 SEATED [2] - 3:3, 28:10 SECOND [1] - 30:25 SECRECY [1] - 16:3 SECURE [1] - 16:1 SECURITY [4] - 11:21, 22:15, 22:17, 41:1 SEE [19] - 3:23, 7:3, 7:4, 11:12, 11:15, 11:17, 11:22, 12:3, 12:5, 12:11, 12:12, 14:18, 14:19, 14:21, 15:6, 28:4, 28:23, 29:11 SEEKING [1] - 5:21 SEEM [5] - 12:24, 17:9, 17:15, 24:14, 27:6 SEEMS [1] - 26:2 SEGAL [1] - 2:2 SEND [1] - 22:14 SENT [2] - 4:24, 18:9 SESSION [1] - 28:9 SET [12] - 29:22, 30:4, 30:24, 30:25, 31:1, 31:11, 31:12, 31:13, 31:17, 31:18, 31:23, 32:23 SETH [1] - 32:8 SETTLEMENT [1] - 14:14 SHAKING [2] - 15:14, 24:25 SHE [2] - 3:9, 22:22 SHORT [1] - 4:4 SHOULD [3] - 12:23, 25:21, 38:16 SHOULDERS [1] - 12:9 SHOW [2] - 39:8, 40:23 SHOWED [1] - 4:22 SHUDDER [1] - 42:18 SHUT [1] - 9:18 SHY [1] - 42:10 SIDE [24] - 10:23, 18:17, 23:3, 23:11,	28:5, 29:5, 34:13, 34:16, 35:5, 35:17, 36:3, 36:25, 37:23, 38:18, 38:21, 39:17, 39:20, 39:25, 40:4, 40:5, 40:6, 40:16, 40:21 SIDES [5] - 35:15, 36:12, 38:11, 40:8, 40:23 SIGNATURE [3] - 12:11, 12:12 SIGNATURES [1] - 11:21 SIGNIFICANT [1] - 18:4 SIMPLE [1] - 20:23 SIMPLY [7] - 4:25, 14:12, 18:7, 18:11, 27:8, 28:3, 35:14 SINCE [2] - 6:23, 18:13 SINGLE [1] - 9:9 SIR [8] - 3:15, 18:20, 20:21, 26:19, 30:12, 31:3, 40:14 SIT [1] - 21:7 SITTING [2] - 4:19, 24:3 SIX [22] - 9:18, 9:21, 11:11, 12:14, 12:15, 12:19, 13:20, 13:25, 15:4, 15:11, 16:6, 23:7, 23:8, 29:14, 30:4, 30:14, 30:24, 31:12, 32:2, 32:22 SKETCH [1] - 28:15 SO [27] - 5:5, 11:19, 13:22, 14:22, 15:16, 16:15, 16:19, 18:9, 19:3, 19:12, 19:15, 21:20, 22:12, 23:14, 26:12, 28:21, 29:4, 32:19, 33:2, 33:5, 34:4, 34:6, 37:8, 37:14, 38:3, 41:13, 42:2 SOCIAL [2] - 22:7, 40:8 SOCIALLY [1] - 9:13 SOLICITOR'S [1] - 14:5 SOLVE [1] - 36:2 SOME [7] - 5:22, 10:6, 14:15, 21:15, 21:17, 32:18, 43:3 SOMEBODY [7] - 3:9, 14:15, 15:1, 22:24, 31:5, 31:25, 36:7 SOMEHOW [1] - 27:20	SOMEONE [7] - 13:8, 13:10, 15:8, 17:3, 22:25, 23:1, 32:6 SOMETHING [4] - 17:13, 24:3, 37:17, 43:6 SOMETIME [1] - 13:2 SOON [2] - 13:2, 35:14 SORRY [6] - 11:6, 12:19, 18:8, 26:24, 30:6, 31:6 SORT [3] - 5:22, 10:6, 17:15 SOUGHT [1] - 24:17 SOUND [3] - 13:3, 31:2, 38:22 SOUNDS [1] - 7:23 SPACE [2] - 17:1, 18:2 SPEAK [9] - 3:5, 3:6, 3:17, 16:25, 20:9, 28:11, 28:12, 35:24, 38:8 SPEAKING [2] - 3:9, 8:16 SPINNING [1] - 26:13 SQUARE [1] - 2:3 STAFF [1] - 7:17 STAND [18] - 3:6, 3:16, 9:22, 12:8, 13:14, 14:7, 15:3, 15:11, 16:17, 17:8, 17:10, 17:11, 17:18, 23:6, 23:10, 24:4, 38:18 STANDARD [1] - 16:9 STANDING [1] - 39:25 START [2] - 5:19, 8:2 STATE [17] - 5:23, 5:25, 6:1, 7:20, 7:22, 16:11, 17:4, 20:13, 24:24, 25:1, 25:2, 25:3, 25:7, 30:21, 32:4, 32:20, 41:13 STATES [1] - 1:1 STATION [1] - 1:16 STATUTE [2] - 33:18, 35:11 STATUTORY [1] - 19:2 STAY [4] - 6:21, 15:10, 40:6, 43:14 STENOTYPE [1] - 1:24 STENOTYPE-COMPUTER [1] - 1:24 STEPHANIE [1] - 9:20 STILL [3] - 6:11, 10:4, 24:14
	S			
	SAFE [9] - 12:20, 15:7, 16:1, 16:25, 20:25, 21:3, 23:6, 23:7, 24:6 SAFELY [1] - 40:1 SAFETY [1] - 41:3 SAID [3] - 35:11, 37:10, 41:4 SAME [11] - 16:9, 18:16, 23:9, 30:19, 30:23, 31:15, 31:22, 32:1, 33:23, 35:16, 38:11 SAY [24] - 4:2, 7:9, 8:22, 13:24, 14:8, 15:2, 15:9, 15:12, 17:9, 17:17, 19:6,			

STRANGERS [1] - 25:24
STREET [4] - 1:21, 2:8, 2:11, 39:15
STRUCK [1] - 27:25
STUDIOUSLY [1] - 4:18
STUFF [1] - 27:25
STYLED [1] - 5:10
STYLES [1] - 5:14
SUBJECT [1] - 35:15
SUCH [2] - 4:4, 31:24
SUFFICIENT [1] - 35:9
SUGGEST [1] - 26:6
SUGGESTION [1] - 10:21
SUITE [1] - 2:11
SUPERIOR [1] - 27:21
SUPERMARKET [1] - 15:6
SUPERSEDEAS [1] - 6:9
SUPPOSED [1] - 18:10
SUPREME [10] - 6:6, 6:11, 24:15, 24:24, 25:1, 25:2, 25:3, 25:7, 32:17, 41:13
SURE [4] - 10:22, 15:25, 27:17, 42:19
SURPRISED [2] - 36:16, 37:22
SURVEYOR [2] - 9:24, 12:22
SUZANNE [2] - 1:20, 43:23

T

TABLE [1] - 29:14
TABLES [18] - 29:10, 29:12, 29:18, 29:23, 30:1, 30:4, 30:14, 30:24, 31:1, 31:12, 31:13, 31:14, 31:17, 31:18, 32:2, 32:23
TAKE [2] - 16:24, 35:13
TAKING [1] - 25:20
TALK [1] - 26:7
TALKING [1] - 35:4
TAPE [1] - 9:21
TELL [15] - 14:6, 16:18, 19:19, 21:19, 22:19, 22:20, 23:3, 25:2, 25:4, 28:6, 33:8, 36:6, 39:2, 42:17, 43:6
TELLING [2] - 16:5
TEMPORARY [2] -

5:15, 25:18
TEN [10] - 7:9, 7:11, 15:7, 15:8, 16:7, 23:8, 31:13, 34:11, 38:19, 40:5
TEN-DAY [1] - 34:11
TENUOUS [1] - 17:15
TERMS [2] - 6:23, 14:24
TERRIBLY [1] - 41:24
TESTIFY [6] - 4:22, 9:21, 11:12, 18:6, 25:21, 25:25
TESTIMONY [4] - 4:19, 13:8, 13:9, 21:16
THAN [21] - 7:10, 8:25, 11:15, 12:14, 12:19, 14:16, 17:18, 18:19, 19:17, 19:21, 21:18, 21:21, 21:23, 25:25, 27:8, 31:16, 35:18, 35:19, 36:22, 41:4
THANK [8] - 4:3, 5:8, 6:17, 28:7, 30:12, 41:22, 43:12, 43:16
THANKS [2] - 43:13, 43:14
THAT [201] - 3:4, 3:12, 3:14, 3:21, 4:7, 4:14, 4:17, 4:22, 4:24, 5:2, 5:5, 5:16, 5:24, 6:1, 6:6, 6:8, 6:12, 6:19, 7:18, 8:12, 9:3, 9:9, 9:10, 9:12, 9:16, 9:17, 10:1, 10:8, 10:9, 10:19, 11:4, 11:10, 11:19, 12:14, 12:18, 12:22, 12:24, 13:1, 13:2, 13:3, 13:6, 13:10, 13:15, 13:16, 13:21, 13:22, 13:23, 13:24, 14:10, 14:16, 14:20, 15:4, 15:5, 15:6, 15:12, 15:13, 15:15, 15:19, 15:24, 15:25, 16:1, 16:7, 16:9, 16:16, 17:4, 17:5, 17:7, 17:9, 17:12, 17:13, 17:14, 17:20, 17:22, 17:23, 18:4, 18:15, 18:19, 19:5, 19:7, 19:9, 19:19, 20:2, 20:9, 21:10, 21:14, 22:11, 22:16, 22:18, 22:20, 23:1, 23:3, 23:5, 23:10, 23:13, 23:14, 23:15, 23:17, 23:20, 23:21, 24:6,

24:10, 24:12, 24:14, 24:17, 24:20, 25:4, 25:6, 25:15, 25:16, 25:23, 25:25, 26:2, 26:3, 26:7, 26:10, 26:15, 26:17, 26:22, 27:1, 27:13, 27:15, 27:19, 27:20, 27:25, 28:5, 28:17, 28:25, 29:1, 29:4, 29:9, 29:18, 30:9, 30:13, 31:2, 31:4, 31:8, 31:10, 31:11, 31:16, 31:20, 31:25, 32:13, 32:14, 32:19, 33:3, 33:6, 33:25, 34:3, 34:22, 35:2, 35:8, 35:15, 35:21, 36:2, 36:3, 36:25, 37:18, 37:19, 37:25, 38:1, 38:4, 38:12, 38:22, 38:23, 39:9, 39:22, 39:24, 40:4, 40:8, 40:10, 40:15, 40:23, 40:24, 41:11, 41:13, 41:19, 42:4, 42:13, 42:24, 42:25, 43:1, 43:3, 43:7, 43:8, 43:18
THAT'S [14] - 13:18, 13:20, 14:1, 17:11, 22:8, 22:9, 27:3, 29:6, 31:18, 33:23, 34:7, 36:4, 37:25
THE [501] - 1:1, 1:2, 1:11, 3:2, 3:6, 3:12, 3:13, 3:16, 3:17, 3:20, 3:23, 4:6, 4:8, 4:10, 4:12, 4:15, 4:16, 4:19, 4:20, 4:21, 4:23, 4:25, 5:2, 5:3, 5:5, 5:7, 5:9, 5:11, 5:18, 5:20, 5:22, 6:1, 6:3, 6:4, 6:5, 6:8, 6:9, 6:10, 6:11, 6:13, 6:14, 6:16, 6:18, 6:20, 6:21, 6:24, 6:25, 7:1, 7:3, 7:6, 7:7, 7:10, 7:11, 7:12, 7:14, 7:15, 7:17, 7:19, 7:21, 7:23, 7:24, 8:2, 8:3, 8:4, 8:5, 8:6, 8:7, 8:8, 8:9, 8:12, 8:14, 8:15, 8:18, 8:20, 8:22, 8:24, 8:25, 9:1, 9:3, 9:5, 9:6, 9:9, 9:10, 9:12, 9:14, 9:15, 9:19, 9:20, 9:22, 9:23, 10:5, 10:11, 10:13,

10:14, 10:16, 10:18, 10:22, 10:23, 11:1, 11:2, 11:3, 11:6, 11:9, 11:10, 11:13, 11:15, 11:17, 11:19, 11:20, 11:21, 11:22, 12:1, 12:7, 12:11, 12:12, 12:13, 12:15, 12:17, 12:24, 12:25, 13:1, 13:5, 13:7, 13:18, 13:22, 14:1, 14:3, 14:4, 14:5, 14:6, 14:9, 14:11, 14:12, 14:13, 14:17, 14:20, 14:22, 14:23, 14:24, 15:1, 15:4, 15:12, 15:18, 15:21, 15:22, 15:23, 15:24, 15:25, 16:1, 16:2, 16:4, 16:6, 16:9, 16:20, 16:23, 17:1, 17:3, 17:4, 17:9, 17:16, 17:19, 17:22, 18:1, 18:4, 18:7, 18:8, 18:9, 18:11, 18:12, 18:16, 18:17, 18:18, 18:24, 19:3, 19:4, 19:5, 19:8, 19:10, 19:12, 19:13, 19:14, 19:15, 19:17, 19:22, 19:24, 19:25, 20:1, 20:3, 20:6, 20:9, 20:11, 20:12, 20:13, 20:15, 20:17, 20:21, 21:2, 21:5, 21:9, 21:11, 21:13, 21:15, 21:18, 21:22, 21:25, 22:3, 22:5, 22:8, 22:11, 22:12, 22:16, 22:17, 22:18, 23:9, 23:17, 23:21, 23:25, 24:4, 24:7, 24:11, 24:15, 24:16, 24:18, 24:20, 24:23, 24:24, 24:25, 25:1, 25:2, 25:3, 25:4, 25:7, 25:12, 25:13, 25:19, 25:23, 26:9, 26:10, 26:11, 26:15, 26:20, 26:24, 27:2, 27:3, 27:5, 27:7, 27:10, 27:11, 27:12, 27:13, 27:17, 27:23, 28:2, 28:5, 28:8, 28:10, 28:14, 28:16, 28:17, 28:18, 28:19, 28:22, 28:24, 29:2, 29:4, 29:5, 29:6, 29:9, 29:10, 29:13, 29:14, 29:15, 29:16, 29:17, 29:19, 29:21,

29:22, 29:24, 30:3, 30:6, 30:10, 30:13, 30:16, 30:18, 30:19, 30:20, 30:23, 30:24, 30:25, 31:1, 31:4, 31:7, 31:8, 31:9, 31:11, 31:12, 31:13, 31:15, 31:17, 31:18, 31:20, 31:22, 31:23, 32:1, 32:2, 32:3, 32:4, 32:6, 32:9, 32:10, 32:11, 32:12, 32:13, 32:15, 32:17, 32:20, 32:22, 32:23, 32:24, 33:1, 33:3, 33:5, 33:6, 33:8, 33:10, 33:17, 33:18, 33:20, 33:21, 33:23, 33:24, 34:1, 34:2, 34:8, 34:16, 34:17, 34:19, 34:22, 34:24, 35:3, 35:6, 35:10, 35:11, 35:12, 35:14, 35:16, 35:20, 35:21, 35:22, 35:23, 35:24, 36:2, 36:5, 36:6, 36:9, 36:10, 36:13, 36:19, 36:24, 37:1, 37:2, 37:3, 37:5, 37:11, 37:13, 37:15, 37:17, 37:20, 37:22, 38:1, 38:3, 38:4, 38:6, 38:10, 38:11, 38:14, 38:16, 38:20, 38:21, 38:24, 39:1, 39:2, 39:8, 39:9, 39:12, 39:13, 39:15, 39:16, 39:17, 39:18, 39:19, 39:20, 39:21, 39:25, 40:5, 40:6, 40:7, 40:8, 40:9, 40:12, 40:15, 40:19, 40:21, 40:23, 41:3, 41:9, 41:12, 41:15, 41:17, 41:19, 41:20, 41:23, 41:25, 42:1, 42:8, 42:9, 42:13, 42:15, 42:22, 43:3, 43:4, 43:5, 43:6, 43:9, 43:11, 43:13, 43:18, 43:19
THEIR [13] - 4:23, 4:24, 5:1, 5:21, 12:8, 14:24, 24:19, 26:17, 26:21, 27:13, 33:11, 35:15, 41:2
THEM [9] - 13:24, 16:3, 18:24, 25:9, 33:11, 33:13, 33:20, 35:23, 39:24
THEMSELVES [1] -

<p>8:25</p> <p>THEN ^[15] - 6:4, 11:6, 13:9, 17:2, 17:18, 24:6, 24:21, 24:24, 25:16, 26:8, 26:14, 29:22, 34:7, 35:5, 36:24</p> <p>THEORETICALLY ^[1] - 17:13</p> <p>THERE ^[66] - 3:11, 3:12, 4:5, 5:3, 6:2, 9:5, 9:17, 9:25, 10:6, 10:15, 11:19, 12:18, 12:19, 16:12, 16:13, 18:7, 18:10, 19:1, 19:4, 19:18, 19:20, 19:21, 20:24, 20:25, 21:2, 21:18, 21:20, 22:15, 22:19, 23:4, 23:15, 25:6, 25:20, 26:12, 26:16, 26:20, 27:7, 27:9, 29:12, 29:24, 31:20, 31:21, 31:23, 32:4, 32:11, 33:16, 35:2, 36:8, 36:22, 37:22, 38:5, 38:6, 38:9, 39:14, 39:15, 39:23, 39:25, 40:3, 41:6, 42:6, 42:9, 42:16, 43:3, 43:5</p> <p>THERE'S ^[5] - 17:25, 21:8, 23:19, 34:11, 38:20</p> <p>THEREFORE ^[1] - 5:3</p> <p>THESE ^[5] - 12:3, 14:20, 19:15, 23:1, 27:17</p> <p>THEY ^[47] - 4:22, 4:24, 4:25, 5:2, 5:21, 5:25, 6:12, 9:11, 9:12, 9:17, 9:22, 10:9, 10:10, 10:14, 10:16, 11:10, 11:12, 11:13, 11:20, 12:7, 12:10, 12:13, 13:9, 13:25, 15:2, 15:10, 19:3, 19:9, 23:11, 23:20, 24:17, 25:11, 25:22, 25:24, 29:25, 31:22, 33:10, 33:21, 34:14, 34:18, 36:11, 37:18, 40:5, 40:6, 40:20</p> <p>THEY'RE ^[6] - 10:8, 11:8, 11:9, 12:8, 13:10, 31:17</p> <p>THING ^[3] - 12:24, 26:4, 41:8</p> <p>THINGS ^[4] - 16:3, 23:17, 25:10, 35:7</p>	<p>THINK ^[23] - 5:10, 5:17, 8:23, 10:12, 10:24, 12:1, 13:5, 17:13, 19:21, 20:7, 21:8, 22:10, 23:14, 23:19, 24:10, 26:14, 26:15, 30:10, 38:3, 38:23, 39:21, 41:10, 42:4</p> <p>THINKS ^[1] - 24:6</p> <p>THIRD ^[1] - 31:1</p> <p>THIS ^[62] - 4:6, 4:13, 5:4, 5:6, 6:3, 7:7, 9:17, 11:2, 12:23, 13:9, 13:10, 14:8, 16:5, 16:6, 16:11, 16:14, 16:15, 16:21, 17:4, 17:10, 17:25, 18:5, 19:23, 20:22, 23:22, 24:2, 24:13, 24:14, 25:12, 25:14, 25:17, 25:19, 26:11, 27:6, 27:24, 28:4, 28:21, 28:24, 29:2, 31:10, 31:11, 32:7, 32:14, 33:9, 37:6, 37:8, 37:18, 38:1, 38:14, 38:15, 39:10, 40:3, 40:16, 40:18, 40:24, 41:18, 42:11, 42:19</p> <p>THOSE ^[10] - 16:3, 21:11, 22:13, 25:9, 29:17, 29:23, 30:14, 31:13, 31:14, 33:17</p> <p>THOUGHT ^[1] - 39:1</p> <p>THREE ^[5] - 14:23, 19:14, 34:5, 40:4, 42:15</p> <p>THROUGH ^[3] - 3:9, 22:17, 37:6</p> <p>THUMBS ^[1] - 5:1</p> <p>THURSDAY ^[1] - 1:9</p> <p>TILL ^[1] - 36:15</p> <p>TIME ^[7] - 14:20, 18:2, 19:3, 19:13, 21:7, 23:22, 37:6</p> <p>TIMES ^[5] - 7:10, 7:11, 11:14, 14:20, 35:8</p> <p>TO ^[308] - 3:5, 3:8, 3:11, 3:16, 3:23, 4:2, 4:8, 4:15, 4:23, 5:2, 5:3, 5:6, 5:17, 5:19, 5:23, 6:5, 7:3, 7:4, 7:15, 7:18, 7:22, 8:2, 8:3, 8:21, 8:22, 9:5, 9:6, 9:9, 9:12, 9:15, 9:19, 9:20, 9:22, 9:24, 10:3, 10:4, 10:11, 11:9, 11:10,</p>	<p>12:7, 12:8, 12:10, 12:11, 12:12, 12:13, 12:14, 12:18, 12:23, 12:24, 12:25, 13:1, 13:5, 13:12, 13:13, 13:15, 13:20, 13:21, 13:25, 14:6, 14:7, 14:10, 14:11, 14:12, 14:18, 14:19, 14:21, 14:23, 15:2, 15:3, 15:4, 15:8, 15:9, 15:10, 15:12, 15:22, 15:23, 15:25, 16:5, 16:6, 16:7, 16:8, 16:10, 16:11, 16:12, 16:15, 16:16, 16:17, 16:21, 16:23, 16:24, 16:25, 17:2, 17:5, 17:6, 17:8, 17:9, 17:15, 17:17, 17:18, 17:25, 18:7, 18:10, 18:15, 18:19, 19:14, 19:16, 20:2, 20:7, 20:15, 20:17, 20:22, 21:9, 21:14, 22:11, 22:13, 22:14, 22:17, 22:18, 22:19, 22:20, 22:21, 22:24, 23:2, 23:3, 23:6, 23:10, 23:15, 23:17, 23:19, 23:22, 23:23, 24:2, 24:5, 24:7, 24:13, 24:14, 24:21, 25:1, 25:3, 25:4, 25:6, 25:8, 25:12, 25:13, 25:17, 25:18, 25:19, 25:21, 25:25, 26:2, 26:3, 26:6, 26:7, 26:10, 26:12, 26:13, 26:16, 26:17, 26:21, 26:25, 27:3, 27:5, 27:6, 27:7, 27:9, 27:14, 27:16, 27:18, 27:19, 27:21, 27:24, 28:1, 28:4, 28:6, 28:11, 28:12, 28:16, 28:18, 29:25, 30:3, 30:11, 30:13, 30:16, 30:18, 30:20, 31:5, 31:10, 31:19, 31:22, 31:25, 32:4, 32:7, 32:13, 32:19, 32:25, 33:5, 33:7, 33:8, 33:9, 33:10, 33:11, 33:13, 33:14, 33:15, 33:17, 33:18, 34:8, 34:19, 34:20, 35:8, 35:9, 35:10, 35:14, 35:16, 35:21, 35:22, 36:22, 37:1, 37:3, 37:6, 37:8, 37:16,</p>	<p>37:20, 37:21, 38:7, 38:8, 38:9, 38:10, 38:11, 38:12, 38:15, 38:16, 38:17, 38:18, 39:1, 39:10, 39:24, 40:6, 40:7, 40:8, 40:17, 40:18, 40:20, 40:21, 40:22, 40:24, 41:6, 41:11, 41:12, 41:18, 41:24, 42:2, 42:5, 42:6, 42:12, 42:16, 42:17, 42:18, 42:19, 42:20, 42:23, 42:24, 43:1, 43:7, 43:13, 43:15</p> <p>TODAY ^[5] - 9:16, 14:10, 24:22, 25:11, 31:21</p> <p>TOLD ^[4] - </p>
---	---	---	---

9:24
WANTS [5] - 13:20, 15:9, 22:19, 33:7, 33:9
WAS [24] - 4:5, 5:3, 5:4, 6:2, 6:13, 6:23, 7:17, 8:12, 8:14, 8:21, 9:9, 9:11, 9:16, 9:17, 11:18, 12:5, 12:15, 18:9, 24:13, 26:6, 27:19, 29:20, 33:3, 34:2
WATCH [5] - 7:15, 15:9, 24:5, 26:17, 26:21
WAY [9] - 4:25, 26:13, 26:15, 29:5, 29:10, 31:18, 31:22, 32:1, 38:11
WE [84] - 5:5, 5:8, 5:9, 5:15, 5:17, 5:25, 6:22, 6:24, 7:17, 7:21, 9:18, 9:19, 9:21, 10:23, 12:17, 12:23, 13:11, 13:15, 13:16, 13:19, 13:21, 14:10, 14:15, 15:3, 15:13, 15:15, 15:19, 15:20, 17:4, 17:5, 17:17, 17:22, 17:23, 18:8, 18:9, 18:16, 20:9, 20:12, 20:14, 20:15, 20:19, 20:20, 22:10, 24:7, 24:21, 25:5, 26:2, 26:7, 27:1, 27:3, 27:14, 27:16, 27:17, 27:24, 30:13, 30:18, 31:21, 32:1, 32:3, 32:21, 33:3, 33:5, 35:7, 35:9, 36:21, 37:4, 37:8, 37:20, 38:4, 39:3, 40:23, 41:6, 41:11, 41:13, 42:6, 42:20
WE'LL [2] - 24:7, 36:24
WE'RE [3] - 13:20, 13:24, 35:3
WE'VE [2] - 27:1, 41:25
WEDNESDAY [1] - 22:12
WEEKS [1] - 27:7
WELL [10] - 3:25, 6:14, 8:2, 16:17, 17:21, 24:20, 28:2, 28:3, 33:22, 43:10
WELL-KNOWN [1] - 28:2

WELL-RESPECTED [1] - 28:3
WERE [31] - 4:9, 4:17, 4:23, 4:25, 5:2, 8:7, 8:10, 9:5, 9:11, 9:22, 9:25, 10:1, 11:10, 12:3, 14:14, 17:9, 17:12, 18:7, 18:10, 18:11, 19:22, 25:22, 25:25, 29:17, 29:18, 34:24, 35:2, 36:6, 36:9, 39:1
WEREN'T [2] - 9:12, 43:1
WHAT [50] - 3:4, 4:2, 7:25, 8:4, 8:17, 8:18, 10:5, 10:19, 10:24, 11:17, 11:18, 12:7, 12:25, 13:21, 15:5, 16:9, 16:14, 16:15, 16:23, 17:1, 17:5, 22:7, 22:8, 22:9, 22:11, 22:23, 24:7, 25:5, 27:24, 28:6, 28:16, 28:19, 30:25, 31:4, 33:16, 34:1, 34:16, 34:20, 34:22, 35:6, 35:9, 37:9, 38:24, 39:5, 39:12, 39:24, 41:24, 42:24
WHAT'S [4] - 10:24, 11:6, 13:23, 17:11
WHATEVER [8] - 13:2, 15:8, 23:6, 23:8, 35:10, 40:1, 40:2
WHEEL [1] - 26:13
WHEN [4] - 3:5, 3:9, 18:9, 25:7
WHERE [7] - 4:9, 5:4, 14:7, 17:19, 26:14, 32:3, 32:22
WHETHER [4] - 12:11, 16:10, 16:12, 16:13
WHICH [17] - 4:16, 5:9, 6:10, 8:7, 8:9, 13:1, 14:9, 14:14, 15:24, 16:17, 20:25, 21:3, 32:22, 33:19, 35:24, 41:10, 42:3
WHILE [1] - 24:3
WHISPERING [1] - 42:16
WHITE [2] - 1:20, 43:23
WHO [30] - 4:19, 4:20, 4:22, 7:17, 8:24, 10:1, 13:8, 14:7, 14:16, 15:9, 17:3, 18:6, 18:10, 18:11, 18:20, 25:21, 26:16,

26:21, 27:2, 27:25, 28:11, 32:7, 32:9, 32:24, 33:13, 35:22
WHOEVER [1] - 29:2
WHOLE [1] - 12:24
WHOM [2] - 7:25, 27:25
WHY [9] - 15:19, 17:19, 27:14, 28:17, 29:1, 30:9, 37:25, 39:8, 42:11
WIDTH [1] - 18:1
WILL [26] - 4:18, 4:22, 11:11, 15:2, 16:19, 17:3, 17:17, 17:19, 18:6, 24:14, 25:16, 28:5, 28:23, 29:11, 32:21, 35:13, 35:15, 37:19, 37:21, 41:5, 41:10, 41:25, 42:1, 42:10, 42:25
WILLING [1] - 38:12
WISH [3] - 18:15, 38:8, 42:17
WITH [34] - 4:14, 4:20, 6:22, 8:3, 9:10, 12:3, 13:7, 15:1, 16:2, 16:25, 17:6, 17:10, 17:17, 22:21, 24:12, 25:9, 25:16, 27:14, 33:15, 33:23, 35:11, 35:20, 37:20, 38:10, 38:13, 39:10, 40:10, 41:7, 42:1, 42:4, 43:3, 43:5, 43:8, 43:9
WITHDRAWN [1] - 42:1
WITHIN [11] - 9:17, 11:11, 15:4, 17:8, 23:6, 26:12, 30:4, 30:14, 30:17, 30:19, 30:24
WITHOUT [4] - 3:18, 37:2, 41:19, 41:20
WITHSTANDING [1] - 6:21
WITNESS [2] - 15:21, 16:21
WITNESSES [2] - 18:6, 25:14
WIYGUL [11] - 2:2, 3:19, 3:22, 3:24, 5:7, 5:8, 5:13, 6:17, 12:21, 36:5, 37:13
WON'T [2] - 9:7, 33:21
WONDERFUL [1] - 40:24
WORK [7] - 9:7, 22:21, 23:13, 28:4, 37:20,

38:13, 39:19
WORKED [1] - 16:1
WORKING [3] - 4:8, 4:14
WORKS [1] - 23:15
WORLD [2] - 35:12, 40:23
WOULD [49] - 3:4, 4:21, 5:25, 7:9, 10:6, 12:13, 12:19, 13:21, 13:22, 14:3, 14:7, 14:8, 14:15, 14:16, 15:8, 16:23, 16:24, 17:14, 20:2, 20:22, 21:13, 22:7, 22:11, 24:12, 25:24, 26:3, 26:9, 26:14, 26:15, 27:8, 28:3, 28:11, 28:12, 35:6, 35:10, 35:14, 36:2, 36:15, 36:20, 37:22, 37:25, 38:8, 38:15, 39:9, 40:12, 40:24
WOULDN'T [4] - 12:2, 19:16, 20:25, 21:3
WROTE [1] - 29:2

Y

YEAH [1] - 39:7
YEAR [1] - 39:4
YEARS [2] - 25:8, 25:10
YES [19] - 3:15, 3:22, 11:5, 14:18, 20:7, 24:9, 26:5, 26:19, 28:19, 29:13, 29:16, 29:19, 29:21, 31:3, 32:21, 37:12, 40:14, 41:9, 42:16
YET [1] - 30:22
YOU [117] - 3:4, 3:5, 3:6, 3:7, 3:16, 3:17, 3:23, 3:25, 4:2, 4:3, 5:8, 6:17, 7:3, 7:4, 7:23, 7:24, 8:17, 9:25, 11:1, 11:22, 12:1, 12:2, 12:3, 12:5, 13:7, 14:4, 14:6, 14:18, 14:19, 14:21, 15:6, 16:2, 16:5, 16:7, 16:8, 16:23, 16:24, 17:2, 18:13, 18:19, 18:21, 18:24, 19:10, 19:16, 19:19, 20:3, 20:14, 20:15, 21:3, 21:5, 21:6, 21:7, 21:11, 21:19, 22:4, 22:19, 23:3, 23:8, 24:7,

26:9, 27:16, 28:4, 28:6, 28:7, 30:3, 30:11, 30:12, 30:16, 30:20, 31:10, 32:6, 32:18, 32:19, 32:25, 33:20, 34:6, 34:23, 36:5, 36:13, 36:14, 37:4, 37:10, 38:7, 38:8, 38:10, 38:15, 38:25, 39:1, 39:7, 39:8, 39:21, 39:22, 40:7, 40:12, 41:5, 41:17, 41:22, 42:3, 42:9, 42:17, 42:24, 42:25, 43:1, 43:6, 43:12, 43:14, 43:16
YOU'RE [18] - 3:17, 8:16, 11:23, 14:3, 15:14, 22:19, 23:25, 24:18, 25:1, 25:3, 25:16, 25:18, 28:1, 28:2, 29:10, 30:7, 32:12, 42:23
YOU'VE [3] - 16:14, 34:10, 42:22
YOUR [82] - 3:7, 3:18, 3:22, 3:25, 4:4, 4:5, 4:13, 5:6, 5:8, 5:14, 5:17, 6:17, 7:4, 7:16, 7:22, 9:4, 9:8, 10:8, 10:12, 10:21, 11:6, 11:14, 12:2, 13:4, 13:16, 14:20, 14:24, 15:14, 16:5, 16:19, 17:24, 18:8, 18:13, 18:14, 18:17, 19:1, 19:7, 20:4, 21:23, 22:2, 22:20, 22:21, 23:6, 23:15, 24:2, 24:6, 24:10, 24:21, 25:12, 26:6, 26:18, 26:22, 26:23, 28:7, 28:12, 28:23, 28:24, 29:3, 29:11, 31:6, 31:19, 32:19, 32:21, 33:2, 33:16, 33:22, 33:25, 34:4, 34:15, 34:18, 35:21, 37:12, 37:14, 37:24, 38:12, 40:12, 41:8, 41:18, 41:22, 42:18, 43:10, 43:12
YOURSELF [1] - 20:3